UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

10-CR-19 (JG)

-against-

United States Courthouse

: Brooklyn, New York

ADIS MEDUNJANIN,

Defendant.

: April 24, 2012
9:30 o'clock a.m.

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TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE JOHN GLEESON
UNITED STATES DISTRICT JUDGE , and a jury.

ATTORNEYS FOR GOVERNMENT:
LORETTA E. LYNCH
UNITED STATES ATTORNEY
BY: DAVID BITKOWER
JAMES P. LOONAM
BERIT W. BERGER
Assistant United States Attorneys
271 Cadman Plaza East
Brooklyn, New York 11201

Also Present:
Special Agent Farbod Azad

ATTORNEY FOR DEFENDANT:
MITCHELL J. DINNERSTEIN, ESQ.
350 Broadway, Ste. 700
New York, New York 10013

LAW OFFICES of ROBERT C. GOTTLIEB
111 Broadway, Ste 701
New York, New York 10006
BY: ROBERT C. GOTTLIEB, ESQ.
JUSTIN F. HEINRICH, ESQ.

STEPHANIE M. CARVLIN, ESQ.
111 Broadway, Ste. 701
New York, New York 10006

Court Reporter:
Marsha Diamond
225 Cadman Plaza East
Brooklyn, New York
TEL: (718) 613-2489
FAX: (718) 613-2369

Proceedings recorded by mechanical stenography, transcript produced by CAT.

M O R N I N G S E S S I O N

(Jury is not present)

THE COURT: Good morning, everybody.

Where is your witness?

MR. LOONAM: Right here, Your Honor.

THE COURT: Are we ready have to start?

MR. LOONAM: Yes.

THE COURT: Bring in the jury, please.

J O H N R O S S , having been previously duly sworn/affirmed, resumed the stand and testified further as follows :

(The following took place in the presence of the jury)

THE COURT: Good morning, everybody.

Please have a seat. Are we ready to resume?

MR. LOONAM: Yes, Your Honor.

DIRECT EXAMINATION CONTINUED

BY MR. LOONAM:

Q Good morning, Investigator Ross.
A Good morning.
Q Yesterday you testified that you had reviewed telephone toll records in connection with this case, correct?
A Yes.
Q And those toll records are summarized in Government Exhibit 173?
If I may publish on the elmo, Your Honor.
And yesterday we discussed toll records between July 28th and August 28, 2008; correct?
A Yes.
Q All right. Right now I just want to focus on August 28th of 2008. Did you review telephone records for August 28th for the numbers listed on Government Exhibit 173?
A Yes.
MR. LOONAM: May I approach, Your Honor?
THE COURT: Yes.
MR. LOONAM: I'm showing the witness what has been marked for identification as Government Exhibit 178.
Q Do you recognize Government Exhibit 178?
A Yes, I do.
Q What is Government Exhibit 178?
A Summary of the toll records for August 28, 2008.
Q Does it fairly and accurately summarize the toll records?
A Yes, it does.

MR. LOONAM: The government moves 178 into evidence.

THE COURT: Any objection?

MR. GOTTLIEB: No objection.

THE COURT: Received.

(Government Exhibit 178 received and marked in evidence).

MR. LOONAM: May I publish?

THE COURT: Yes.

Q Investigator Ross, do the color codings on Government Exhibit 173 corresponds to the colors on 178?
A Yes.
Q Now, how many contacts were there between the Najibullah Zazi prepaid says and Adis Medunjanin cell on August 28, 2008?
A There were nine.
Q How many contacts were there between the Zarein Ahmedzay, and the Adis Medunjanin on August 28th?
A Two.
Q And finally, how many contacts were there between Najibullah prepaid cell and Zarein Ahmedzay on August 8th?
A There were five.
Q After August 28, 2008 what is the next day that toll records show any connectivity whatsoever between these phones?
A February 4th, 2009.
Q And that is reflected in Government 173, correct?
A Yes.

Q This reflects the tolls from 8/28, correct?
A Yes.
Q This is where 8/28 ends call 7:51 p.m. between Zarein Ahmedzay cell phone and the Najibullah Zazi prepaid?
A Yes.
Q And the next call that is reflected in the record is what?
A February 4, 2009.
Q And that call was between who?
A Between Adis and Zarein.
Q The Adis Medunjanin cell phone and Zarein Ahmedzay cell phone?
A Yes.
Q Do you have any indication that Najibullah Zazi continued the use the same prepaid cell phone number in 2009 as he used in 2008?
A He did not use the same number.
Q What is the next telephone number that you have records for that are associated with the Najibullah Zazi?
A 303 500 2877 also indicated in green.
Q So this number here?
A Correct.
Q So going back to Government Exhibit 173, so for this time period from February 4, 2009 up until March 17, 2009 do you have any records -- toll records that you were able to analyze

for Najibullah Zazi?
A No.
Q Now, did the toll records for the Najibullah cell phone which is the 303 500-2877 phone number, do those toll records contain records for text messages?
A No, they do not.
MR. LOONAM: Your Honor, if I can, I'm going to publish government 136 which is in evidence and I'm going to ask Investigator Ross just to read A and B -- not the whole, just A and B.
A (Reading): On June 23, 2009 Najibullah Zazi travelled from Denver International Airport in Denver, Colorado to John F. Kennedy, Queens, New York aboard Jet blue flight number 98.
On June 27, 2009 Najibullah Zazi travelled from John F. Kennedy Airport, Queens, New York to Denver International Airport in Denver, Colorado aboard Jet blue Flight 97.
Q Now, did you review telephone toll records for this time period between June 23rd, 2009 and June 27, 2009?
A Yes, I did.
MR. LOONAM: I will be publishing 173.
May I approach, Your Honor?
THE COURT: Yes.
MR. DINNERSTEIN: Your Honor, may I look just to see the board?

THE COURT: Of course.

MR. DINNERSTEIN: Thank you.

Q Showing the witness what's been marked for identification as Government Exhibit 179. Investigator Ross, do you recognize Government Exhibit 179?

A Yes.

Q What do you recognize it to be?

A The toll records summary chart for the phones in question between June 23, 2009 through June 27, 2009.

Q And does this exhibit fairly and accurately summarize the toll records that you reviewed?

A Yes.

MR. LOONAM: The government moves Exhibit 179 into evidence at this time.

MR. GOTTLIEB: No objection.

THE COURT: So I am clear, that is a subset of this larger exhibit?

MR. LOONAM: It is.

THE COURT: Received.

(Government Exhibit 179 received and marked in evidence)

THE COURT: Mr. Dinnerstein, if you want to move that chair, feel free to, so you are comfortable.

MR. DINNERSTEIN: Thank you, Judge.

MR. LOONAM: May I publish?

THE COURT: Yes.
Q Okay. During this time period of June 23, 2009 and June 27, 2009, how many contacts were there between the Najibullah Zazi cell phone and Adis Medunjanin cell phone?
A There were seven.
Q How many of those contacts were initiated by the Adis Medunjanin cell phone?
A Four.
Q How many contacts were there between the Adis Medunjanin cell phone and Zarein Ahmedzay cell phone?
A Seven.
Q How many contacts were there between the Najibullah Zazi cell phone and Zarein Ahmedzay cell phone during this period?
A One.
Q And again, the Adis Medunjanin cell phone is indicated on yellow on that exhibit, correct?
A Yes.
Q And what color is the Najibullah Zazi cell phone indicated on?
A Green.
Q And Zarein Ahmedzay cell phone, what part is that indicated on?
A Purple.
MR. LOONAM: Your Honor, I'm going to publish 136 again, and I will ask the agent to read Government Exhibit 136

in evidence and just paragraphs C and D.

A (Reading): On August 17, 2009 Najibullah Zazi travelled from Denver International Airport in Denver, Colorado to John F. Kennedy in Queens, New York aboard Jet blue flight number 98.

On August 19, 2009 Najibullah Zazi travelled from John F. Kennedy International Airport in Queens, New York to Denver International Airport, in Denver Colorado aboard Jet blue flight number 97.

Q Investigator Ross, did you have an opportunity to review the cell phone records for the time period between August 17th to August 20th?

A Yes.

Q All right. And that takes the toll records to a day after Najibullah Zazi returned to Colorado according to that stipulation, correct?

A Yes.

MR. LOONAM: May I approach, Your Honor?

THE COURT: Yes.

Q Showing the witness what is marked for identification as Government Exhibits 180 and 180 A?

Do you recognize Government Exhibits 180 and 180 A?

A Yes.

Q And what you do recognize them to be?

A Those are a summary charts of the call records of all the phones in question that covered August 17, 2009 through August 20th, 2009.

Q Do the exhibits fairly and accurately summarize the toll records which you reviewed?

A Yes.

MR. LOONAM: Your Honor, the government offers 180 and 180-A.

MR. GOTTLIEB: No objection.

THE COURT: Received.

(Government Exhibit 180, 180-A so marked)

MR. LOONAM: May I publish?

THE COURT: Yes.

Q All right. For this time period between August 17, 2009 and August 20th, 2009 how many contacts were there between Adis Madunjanin and Najibullah Zazi cell phone during this time period?

A There were nine.

Q And how many of those contacts were initiated by the Adis Medunjanin cell phone?

A Eight.

Q How many contacts were there between Zarein Ahmedzay cell phone and the Adis Medunjanin cell phone during this time period?

A Eight.

Q And how many contacts were there between the Zarein

Ahmedzay cell phone and the Najibullah Zazi cell phone during this period?
A Eighteen.
Q So 18 contacts, this is a period of how many days?
A It's three days.
Q Did you have an opportunity to review the cell phone records for June -- I'm sorry -- toll records for June 4, 2009?
A Yes, I did.
MR. LOONAM: May I approach, Your Honor?
THE COURT: Yes.
Q I am showing the witness what has been marked Government Exhibit 181 for identification.
A That is September 4th.
Q I'm sorry.
You reviewed toll records for September 4, 2009?
A Yes.
Q And I'm showing the witness what is marked as Government Exhibit 181 for identification.
Do you recognize this exhibit?
A Yes.
Q What do you recognize it to be?
A Summary chart of the contacts between the phones that were in question for September 4, 2009.
Q And does it fairly and accurately reflect the toll

records you reviewed?
A Yes.
MR. LOONAM: The Government offers 181 at this time , Your Honor.
MR. GOTTLIEB: No objection.
THE COURT: Received.
(Government Exhibit 181 received and marked in evidence)
MR. LOONAM: May I publish?
THE COURT: Yes.
Q Investigator Ross, when I've been referencing contacts, that includes, calls, text messages missed calls, voice mails, correct?
A Correct.
Q Do you know what the contents of any of those communications are based on the toll records?
A No.
Q On June 4th how many contacts were there between Najibullah Zazi and Adis Medunjanin?
A Four.
Q I'm sorry. Did I say -- on September 4th -- I misspoke -- how many contacts were there between Najibullah Zazi and Adis Medunjanin, cell phones?
A Four on September 4th.
Q And how many contacts were there on September 4th between

Najibullah Zazi and Zarein Ahmedzay?
A One.
Q Drawing your attention to 11:53 on September 4th of 2009, do you see a text message from the Najibullah Zazi cell phone to the Zarein Ahmedzay cell phone?
A Yes.
MR. LOONAM: I am going to publish what is in evidence as Government Exhibit 209-A, and I'm turning to text message section of this exhibit.
Q On this exhibit you see a text message from Najibullah Zazi's cell phone number?
A Yes.
Q All right. Which entry is that for September 4th of 2009?
A It is the second one down from the top.
Q I see.
So if I move this over so the numbers --
A Number eight.
Q Number eight. Okay.
So here -- and the name that is associated with this phone number in this phone was what?
A Nanz N-A-N-Z.
Q And what is the subject -- what is the content of that text that was contained on this phone?
A Salemaleikum inshallah, no rental car.
Q That text message is 11:53 from the Najibullah Zazi's

cell to the Zarein Ahmedzay cell, correct?
A Yes.
Q Now, at 11:53 did the Najibullah Zazi cell phone send any other text during that same minute of 11:53 a.m. September 4, 2009?
A Yes.
Q And who did or which phone did the Najibullah Zazi cell phone send a text message to at that same minute?
A Adis cell phone.
Q The Adis Medunjanin cell phone?
A Yes.
MR. LOONAM: Going to publish what's in evidence as Government Exhibit 207-A.
Q What is Government Exhibit 207-A?
A It's what is called a cell bright report or forensic phone download of a phone with the IMEI number of 358265012463912.
Q Flipping through this phone download, and when was this download created?
A September 19th, 2009.
Q Flipping through this do you see contact entry for the Najibullah Zazi cell phone in this phone?
A Yes.
Q Which item is that?
A Item number 37.

Q So indicating here.

And what is the contact name listed on this phone.

A Najib N-A-J-I-B.

Q Najib.

A Najib. Najib.

Q Okay. I'm turning to the text message portion of this report, and does this report contain or indicate that the phone that it was taken from has cell phone messages or text messages that predated September 4, 2009?

A Yes.

Q And did this phone contain text messages which post dated September 4, 2009?

A Yes.

Q Does this phone -- did this phone on September 19th contain any text message for September 4, 2009?

A No.

Q Based on your training and experience if a text message is sent to a phone what are the possible ways that it could no longer appear on the phone?

A The phone only contains a certain amount of memory, so as the text messages or information builds up, the phone automatically deletes the oldest ones. That is one way. The other way would be it would be manually deleted by somebody.

Q And so, if there are messages on a phone that predate the sending of a text, would that text -- could that text have

been deleted through this automatic deletion that you're referring to?
A No. It would indicate that the texts that would have shown on September 4, 2009 were manually deleted.
Q Now, let's walk through September 4, 2009 and the contacts between the Najibullah Zazi cell phone and the Adis Medunjanin cell phone. The first contact we have just discussed is 11:53 a.m., correct?
A Yes.
Q And that is this text message?
A Yes.
Q All right. And then what is the next contact between the Najibullah Zazi cell and the Adis Medunjanin cell?
A On 11:55 a.m. the Adis Medunjanin cell initiates a text to the Najibullah Zazi cell.
Q So there an 11:53 text, then 11:55 text?
A Yes, correct.
Q And what is the next contact after that?
A There's an 11:56 a.m. text that was initiated by the Adis Medunjanin cell phone to the Najibullah Zazi cell phone.
Q And then, finally, what is the last contact between the Adis Medunjanin cell phone, and the Najibullah Zazi cell phone on September 4, 2009?
A 11:59 a.m. there's a text that's initiated by Najibullah Zazi cell phone to the Adis Medunjanin cell phone.

Q Do any of those September 4th text messages between the Najibullah Zazi cell phone and the Adis Medunjanin cell phone, are those reflected in Government Exhibit 207-A?

A No.

MR. LOONAM: Publishing Government Exhibit in evidence 173. I'm going to flip to September 10th of 2009 on this exhibit.

Now, before we do anything further, Your Honor, I'd like to read a brief stipulation in the record which is marked as Government Exhibit 172-A for identification.

THE COURT: Okay. 172-A is received.

(Government Exhibit 172-A\ received and marked into evidence).

MR. LOONAM: (Reading): If called to testify A representative from the Sprint would testify that Government Exhibits 169 and 170 --

THE COURT: Slow down. Slow down.

MR. LOONAM: Yes, sir.

(Reading): If called to testify a representative from Sprint would testify that Government Exhibits 169 and 170 contain true and accurate records for telephone number (917), 217-3319, and that all of these records are kept in the ordinary course of business by Sprint.

The parties agree to te authenticity of Government Exhibits 169 and 170.

The parties further agree to the admissibility of this stipulation which is has been marked for identification as Government Exhibit 172-A.

THE COURT: All right. 169 and 170 are received.

(Government Exhibits 169 and 170 are received and marked in evidence)

Q How many contacts are there on September 10th and 11th between the Najibullah Zazi's cell phone and the Zarein Ahmedzay cell phone?

A There were five in total.

Q How many contacts are there between the Najibullah Zazi cell phone and what I will a refer to as the funeral home cell phone?

A Thirteen.

Q And the funeral home cell phone is indicated in what color on Government Exhibit 173?

A Blue.

Q And the first contact in those records between the funeral home cell phone and the Najibullah Zazi cell phone appears where or when?

A On September 11, 2009 at 11:34 a.m.

Q So that this record here?

A Yes.

Q How many contacts are there between the Adis Medunjanin and the funeral home cell phone between September 10th and

September 11th?
A Three.
Q And when is the first contact between Adis Medunjanin and the funeral home cell phone?
A September 11th, 2009 at 11:51 a.m.
Q So that's this record here?
A Yes, correct.
Q It is followed up by 12:09?
A Yes.
Q How many contacts were there between the Najibullah Zazi cell phone and the Adis Medunjanin cell phone between September 10th and 11th, 2009?
A One.
Q Is that call indicated on the summary chart?
A Yes.
Q What time was that call at?
A 3:36 p.m.
Q Is that this line here?
A Yes.
Q And who initiated that call?
A Adis Medunjanin's cell phone.

MR. LOONAM: Your Honor, at this time I'd like to read another portion of a brief stipulation into the record. The stipulation is marked for identification as Government Exhibit 118.

THE COURT: 118 is received.

(Government Exhibit 118 received and marked in evidence)

MR. LOONAM: The relevant portion of the stimulation reads: Government Exhibit 115 is a recording of a telephone conversation between the defendant Adis Medunjanin and Najibullah Zazi that was lawfully obtained by the government.

Government Exhibit 115-T is an accurate transcript of Government Exhibit 115.

Government Exhibits 115-T accurately indicates the date and time at which the recorded conversation began and accurately indicates the telephone numbers involved in the call.

Government Exhibit 115 in this stipulation, which is marked for identification as Government Exhibit 118, is admissible into evidence.

THE COURT: All right. 115 is received.

(Government Exhibit 115 received and marked in evidence).

MR. LOONAM: Are the transcripts in the binders?

If the jurors, could they please open up their binders to Government Exhibit 115-T.

THE COURT: Yes.

I take it the stipulation doesn't embrace 115-T being received into evidence; is that correct.

MR. LOONAM: Yes, that is correct, Your Honor.

THE COURT: All right.. it's the first tab in here, at least it is the first tab in mine and again, ladies and gentlemen, don't -- there's another, in addition to that Dot (ph) transcript, I think there's a third transcript that we have not gotten to yet, don't forage around. Just focus your attention on the transcript we've invited your attention to.

All right. You're going to play this 115?

MR. LOONAM: Yes, Your Honor, but we will publish.

THE COURT: This is a podium laptop.

MR. LOONAM: Yes, Your Honor.

(Tape played); (Tape stopped)

Q All right. Investigator Ross, you know what an IP address is?

A Yes.

Q What isn't IP address?

A IP address is a unique numerical number that gets assigned to a piece of computer equipment that wants to communicate with a network. Generally it's with the internet or the worldwide web and allows the computer to send and receive messages.

MR. LOONAM: I'm going to publish what's already in evidence as Government Exhibit 264.

Q What is this?

A It's an IP history log for a hot mail e-mail account

which is -- the e-mail account is ZAZMJHD@hotmail.com.
Q That's indicated here?
A Yes.
Q And on what date was this e-mail account opened or activated?
A On November 27th, 2008.
Q And based on the IP information where was the IP assigned out of that -- initiated this e-mail address?
A The IP address is 116.71.220.132.
Q And is that associated with the geographical location?
A Yes.
Q What geographical location is that?
A Pakistan.
Q I'm going to show you what's in evidence as Government Exhibit 251. What is Government Exhibit 251?
A It is an IP history log for a Yahoo e-mail account and the e-mail account is ZAZMJHD@yahoo.com.
Q And looking at the last entry on this log -- first of all, what does this column indicate here, log-in time?
A That indicates the date and time that the user of that e-mail account logged in from and the date and time that they logged in.
Q All right. And indicating here is there a log-in indicated for December 3rd, 2008?
A Yes, there is.

Q And what is the IP associated with that log-in?
A 119.30.76.100.
Q And is there a geographical location that is associated with that IP address?
A Yes.
Q And what geographical location is that?
A Pakistan.
MR. LOONAM: I would like to publish what is in evidence as Government Exhibit 261.
Q What is Government Exhibit 216?
A IP log history for a yahoo e-mail account Sana_Pakhtana@yahoo.com
Q Again, this a log-in time?
A Yes.
Q And I'm going to direct your attention to September 6th, is there a log-in time for September 6th reflected in Government Exhibit 261?
A Yes.
Q Please tell us what that record reflects with respect to that log-in time?
A The IP address.
Q Well, was there a log-in on September 6th?
A Yes, log-in at September 6th on Sunday at 11:08 hours GMT.
Q And that is September 6, 2009, correct?

A Yes.
Q And what was the IP address associated with that log-in?
A 116.71.217.18.
Q And there is a geographical location associated with that IP address?
A Yes.
Q What is the geographical location associated with that IP address?
A Pakistan.
Q What was the next log-in date after the September 6th, 2009 log-in date?
A September 12, 2009.
Q All right. And again, what was the IP address for that log-in?
A 119.153.14.87.
Q And again, is there a geographical location associated with that IP address?
A Yes.
Q What is that geographical location?
A Pakistan.
Q Were there any log-ins for the SANA_PKHTANA e-mail between September 6th and September 12th?
A No.

MR. LOONAM: One moment, Your Honor.

(Government counsel conferred).

MR. LOONAM: No further questions, Your Honor.

THE COURT: Thank you, Mr. Loonam.

MR. Gottlieb.

CROSS-EXAMINATION

BY MR. GOTTLIEB:

Q Good morning.

A Good morning.

Q You were asked to review the actual phone records, correct?

A Yes.

Q And were you aware that FBI agents spoke to Najibullah Zazi many times and asked him questions about those phone records?

A I know they spoke to him many times. I am not aware of the exact questions they asked him about the phone records.

Q Well, as part of your work did you learn that Zazi, in fact, was shown these records that you reviewed?

A No, I am not aware he was shown the records.

Q Do you know, based on the work you did in preparing these charts, do you know whether or not agents specifically asked Zazi if he recalled speaking to Adis Medunjanin and did he recall what was said during those conversations?

A No, I'm not aware of those conversations.

Q Same thing with regard to the records as they pertain to Zarein Ahmedzay, based on the work you did are you aware that

the agents spoke to Zarein Ahmedzay and asked him about those same phone records?
A No, I'm not aware of that.
Q Now, with regard to the records themselves, if you look at 173 in evidence, and if we look at -- for example, if we look at February 8th of 2009 and we have just from the records contact that is -- that is shown on the billing records between Adis Medunjanin and Zarein's phone numbers, correct?
A Yes.
Q And then that last column that shows AM cell and ZA cell, is it fair to say that in looking this at this document in evidence that last column, that means that if you look at the actual cell phone records for Adis Medunjanin on that particular day at that particular time, the call will be reflected on the chart as you indicated, the AM cell, correct?
A Yes.
Q And if you look at those same records all that you will see is that on that day at that time that record will show -- that contact will show and appear on Zarein's record as well, correct?
A Yes.
Q And if you look at this chart, and all the charts that you prepared, as well as 173, if only the word AM cell appears in that last column, fair to say that that means that the particular contact only appears on Adis' cell phone records,

correct?
A Yes.
Q Even though the chart shows that there appears to be contact between Adis and Zarein's cell phone, correct?
A Yes.
Q And the reason for that, as you explained, is there could be a number of reasons, correct?
A Yes.
Q It could be that the call that was or the contact that it comes from, Adis' cell phone to Zarein's cell phone or any other cell phone, it could be that the receiving cell phone was shut off, correct?
A Yes.
Q It could be that no one answered the receiving cell phone, correct?
A Yes.
Q It could mean that even if there was contact there was no voicemail left on the receiving phone call -- phone, correct?
A Yes.
Q And is it fair to say that even based on these charts, if there's only one notation of what bill it appears on, it may be because a voice message alone was left on the receiving cell phone?
A That's correct.
Q And you also told us that there's another reason why in

that last column it would only appear -- one cell phone would only appear on one record. You told us that the call was received but the billing system for some unknown reason just didn't pick it up?

A That's correct.

Q So even based on your experience and training in preparing these charts, is it fair to say that you really may not have the accurate record of what transpired between the calls -- both sending the calls and receiving the calls, correct?

A No, I wouldn't say that.

Q Well, you would agree that even if -- based on your experience, the billing systems for some reason don't even sometimes pick up on the billing records, correct?

A Based on my experience if a call generates a record, whether it's on the receiving end or the originating end, there was a call that was made, so there was definitely a call made.

Q And other than a call being made by a cell phone to some other cell phone, you can't say, and these charts don't say, whether or not it was received by the receiving end, correct?

A Correct.

Q It doesn't show whether or not the receiving end even picked up the call, correct?

A Correct.

Q All these charts show what the paper records, the computerized records from these phone companies, reflect correct?

A It shows that calls were -- calls and texts were sent.

Q Did you tell us also that the most common reason for only one persons's cell appearing in the record is that the call was not answered by the terminating number?

A Correct.

Q So if you look at 173, just as an example, and you look at the first line, 728, originating number which is Adis Medunjanin's cell phone, terminating number which is a Adir's cell phone number, it shows duration one minute and Exhibit AM cell, correct?

A Yes.

Q You have no ways to know if that call was actually answered by the terminating number, correct?

A Correct.

Q You were asked about August 2nd of 08 on 173. That was the record that shows a time of 2:22 -- withdrawn. It reflects 2:22 p.m. and it also right under that 6:21 p.m., some four hours later. What was your explanation for that four hours?

A The 212 671-2381 colored in green, there is a T-Mobile prepaid cell phone. All T-Mobile prepaid cell phones, the business records for those are all generated from a facility

out on the west coast so they're all four hours difference.
Q Is that California four hours, or is it three hours?
A It is four hours on there-- for whatever reason, their facility is out on the west coast and there's a four-hour difference in the billing records for all T-Mobile prepaid phones.
Q And you understand that Pacific time is three hours difference?
A I understand, yes.
Q But the phone companies don't understand?
A Apparently not.
Q Now, the duration of the calls that are in these charts, time and time again, even on this first page 137, we see duration one minute, correct?
A Yes.
Q You testified that that column reflects also the duration of the call or the text, correct?
A Yes.
Q And you're aware, are you not, that even when it is indicated one minute, that does not necessarily reflect that each of calls so indicated actually lasted one minute, correct?
A Correct. Those are the billable minutes.
Q And in fact, in analyzing the telephone records you would agree that one minute simply reflects also the minimum time

for billing purposes and that the calls, in fact, could be any time under one minute, correct?

A That's correct.

Q And fair to say that the same would be true for the duration of any call that may even be listed as two minutes or three minutes, specifically that that does not mean for anyone analyzing these records that the call lasted either two or three minutes, correct?

A It doesn't have to mean that, no.

Q Now, in reviewing the original cell phone records, you are aware that they also -- the records themselves, not the summary charts, the records the phone records themselves, also reflect when a person retrieves a voice message, correct?

A Yes.

Q In fact, cell phone records reflect the exact date and time that an individual actually retrieves a voicemail message, correct?

A Certain instances, yes.

Q And you, having reviewed those original telephone records, you are aware that between February of 2009 and September of 2009, there were instances when both Zarein Ahmedzay and Adis Medunjanin retrieved voice messages, correct?

A Yes.

Q Now, in your summary charts, the government charts, they

do not reflect any of those instances, do they?
A No.
Q Now, again, looking at Government Exhibit 173, specifically April 13th at 6:16 a.m., a record indicating contact between Adis Medunjanin's cell phone and Zarein Ahmedzay's cell phone, it indicates one minute, correct?
A Yes.
Q And you're not able to say whether or not that one minute notation reflects an actual conversation or a voice message, correct?
A Well, in general because it showed up in the two billing records that I would say that it was answered and someone actually spoke.
Q You're not saying that if a phone is actually turned on and a person leaves a voice message on that phone, are you saying that it will not appear on both cell phone records for billing purposes?
A Most times, not.
Q Sometimes yes?
A Yes, sometimes it could, but most times, not.
Q And in this case you don't know which applies, do you?
A No, but in general I would say that that call was answered by a person.
Q But you don't know?
A No, no.

Q Based on your review and based on all these summary charts, is it fair to say that it is impossible for anyone to determine the amount of actual voice-to-voice contact between Adis Medunjanin and either Zarein Ahmedzay or Najibullah Zazi, correct?
A Correct.
Q In April of 2009 did you have a chance to see how many notations, how many billing records, actually reflect Adis being the original caller to Zazi in April of 2009?
A If I can look back at my notes I think I might. Okay. April 2009 contacts between who?
Q Contacts in which Adis Medunjanin is the originating caller to Zazi.
A I showed there's no contacts.
Q And even in April of 2009 where you indicated, I believe, there were four notations from Zazi to Adis, April 26th, looking at 173 in evidence, at 12:39 p.m., it indicates a duration of 17 seconds?
A Yes.
Q And on April 26th, 2009 originating call on the cell phone of Zazi to Adis Medunjanin's cell phone, 15 seconds?
A Yes.
Q In May of 2009 do the records reflect any calls originating from Adis Medunjanin to Zazi?
A No.

Q Now, based on your experience do you know what the term pocket dial means?
A Yes.
Q Are you aware that the FBI agents specifically asked Zazi about calls to Adis Medunjanin in which the issue of inadvertent pocket dials having been raised?
A I'm not aware of the agents asking about pocket dials.
Q Well, as you were preparing the summary charts, did you have conversations with the prosecutors in which they discussed with you the issue of inadvertent calls in dialings?
A Yes.
Q So as you prepared these summary charts you were aware that there was an issue about Zazi -- Zazi's records reflecting calls that were, in fact, inadvertent dials, correct?
A I was made aware of those after the chart was actually made.
Q And you didn't note anywhere on the chart all of the days in which Zazi said may have been the result of inadvertent calls or pocket dials, correct?
A I noted them on my notes. Yeah, there were two calls, I believe.
Q Is it your understanding there were two calls or were there more calls that Zazi told the agents were inadvertent calls?

A I'm aware of only two.
Q Did you speak to Zazi yourself?
A No.
Q As you were preparing these charts for the jury did you think it might be important to meet with the person who indicated to agents that there were inadvertent dials that were reflected on his telephone records, did you think that was important?
A I wasn't aware that that occurred until very recently.
Q There were a few calls here that run 400 seconds. Did you ask any of the agents about the possible significance of those calls that run 400 seconds?
A No.
Q For example, again on 173, April 2, 2009, originating call Zazi, terminating call Adis Medunjanin, 400 seconds, 8 minutes, do you see that?
A Yes.
Q You didn't question any of the agents or Zazi about that particular billing?
A No.
Q And looking at the records for September 10, 2009, can you tell us whether there were any texts from Zazi to Adis Medunjanin's phone September 10th, 2009?
A You mean you put the chart up -- can you put the chart up on the --

Q I'm sorry.

THE COURT: Slide over.

THE WITNESS: Can you move it over a little bit.

THE COURT: Thank you.

A Now what was your question.

Q Were there any texts from Zazi's phone to Adis Medunjanin's phone?

A On September 10th, 2009, no.

Q With regard to these last calls that you told us about, we listened to the telephone conversation, that funeral home number, that is the number that's connected to the person whose voice we heard on that tape as you understand it, a Ahmad Wais Afzali, correct?

A Yes.

Q And did you learn --

A No, I'm sorry. That wasn't a call between Afzali. Not that I'm aware of.

Q Were you aware that Afzali -- were you told, as you were preparing these charts for that day, were you prepared that photographs of Adis Medunjanin and Zazi and Zarein were shown to Ahmed Wais Afzali?

A I wasn't prepared but I am aware of that from general knowledge of the case.

MR. GOTTLIEB: Thank you, very much.

THE COURT: Thank you, Mr. Gottlieb.

Is there any redirect.

MR. LOONAM: Very briefly, Your Honor.

THE COURT: Okay.

REDIRECT EXAMINATION.

BY MR. LOONAM:

Q Looking at the Government Exhibit 173, does Government Exhibit 173 reflect statements made by Najibullah Zazi to the FBI?

A No.

Q You were asked questions about than on cross-examination, correct?

A Yes.

Q Does Government Exhibit 173 reflect information that Zarein Ahmedzay provided to the FBI?

A No.

Q Does Government Exhibit 173 reflect any statements that the defendant --

THE COURT: We get this. You can sum up. It reflects what it reflects.

Q Now, you were asked some questions about the recording that we heard from a call on September 11th, correct?

A Yes.

Q And that call occurred at 3:36 p.m. on September 11th?

A Yes.

Q And that call is between which phone numbers?

A Between the Adis cell phone and Zazi cell phone.
Q And you were asked questions on cross examination about contact with the Adis Medunjanin cell phone, I believe, in April of 2009; is that correct?
A Yes.
Q If you looked at the April 2009 records, I have them up on the elmo here, and this goes on this page, we have the records from April 2nd, 2009 down to April 14th. When I turn the page we have April 14th to April 27th and if I turn the page again you have April 27th to April 29th, correct?
A Yes.
Q Were you able to tally the number of contacts between Adis Medunjanin cell phone and Zarein Ahmedzay cell during April of 2009?
A Yes.
Q How many contacts were there between the Adis Medunjanin cell phone and Zarein Ahmedzay cell phone for April 2009?
A Forty-four.
Q For example, I direct your attention this entry here which is for 2:39 a.m., correct?
A Yes.
Q Directing your attention to first call of -- let me zoom in a little bit -- of 4/27/2009. What is the first call made on these records on April 27, 2009, at what time?
A At 5:47 a.m.

Q From which phone to which phone?
A From Adis cell phone to the Zarein cell phone.
Q Just flipping back a page to April 14, 2009, what is the first call on April 14, 2009 reflected on these records?
A Six a.m.
Q And that call goes from which phone to which phone?
A From the Adis cell phone to the Zarein cell phone.
Q And again, if you just go up to April 7th of 2009, again, is there a call early in the morning?
A Yes, 6:15 a.m. between the Adis cell phone and Zarein cell phone.
Q Did you tally the contacts between the Adis Medunjanin cell phone and Zarein Ahmedzay cell phone for February of 2009?
A Yes, I believe I did. Let me just go back to my notes (perusing). No, I don't think we had February.
Q Did I catch the one --
A You caught the one month, yes, thank you.
Q Safe to say looking at the records for February, which are currently on the elmo, there are a significant number of contacts through the month of February between the Adis Medunjanin cell phone and Zarein Ahmedzay cell phone?

MR. GOTTLIEB: Objection.

THE COURT: Sustained. You can sum up on this.

(Continued on next page)

BY MR. LOONAM: (Continued)
Q Now, you were asked questions about why certain records had, you know, two times in them.
Do you remember those questions?
A Yes.
Q Okay. All right, could this Exhibit have been misleading had you not grouped the calls together?
MR. GOTTLIEB: Objection, Your Honor.
THE COURT: Sustained.
Q Okay, why do you group the calls together like this?
A To show that the calls, that calls were reflected on two records and the times, the exact times that were shown on the original billing records.
Q Had you not grouped the calls together, would this Exhibit have contained additional contacts?
MR. GOTTLIEB: Objection.
A It would have made --
THE COURT: I'm sorry?
MR. GOTTLIEB: Objection.
THE COURT: Overruled.
A It would have made it appear as though there were more calls.
MR. LOONAM: I have no further questions, Your Honor.
THE COURT: Thank you, Mr. Loonam.

Anything further?

MR. GOTTLIEB: No, Your Honor.

THE COURT: You can step down, thank you, have a good day.

(Witness excused.)

THE COURT: Call your next witness please.

MS. BERGER: Government calls Kirk Yeager.

(Witness enters and takes stand.)

THE COURT: Come on up here, please. Good morning.

THE WITNESS: Good morning.

THE COURT: Please, stand next to that chair and Julia will swear you in.

THE WITNESS: Okay.

THE COURT: Please.

THE COURTROOM CLERK: Please, raise your right hand.

D R. K I R K Y E A G E R,

called by the Government, having been first duly sworn, was examined and testified as follows:

THE COURTROOM CLERK: Please, take a seat and state and spell your name for the record.

THE WITNESS: Okay. It is Dr. Kirk Yeager -- K-I-R-K, Y-E-A-G-E-R.

MS. BERGER: May I enquire?

THE COURT: Yes.

DIRECT EXAMINATION

BY MS. BERGER:

Q Good morning.

A Good morning.

Q What do you do for a living?

A I'm a senior forensic scientist for the FBI laboratory.

Q Are you a scientist for a particular unit within the FBI?

A Within the FBI, I'm assigned to the TEDAC -- the Terrorist Explosive Devices Analytical Center.

Q How long have you held that position?

A Approximately, two years.

Q And what did you do before?

A Before I was with TEDAC, I was a forensic examiner with the FBI Explosives Unit.

Q How long have you been with the FBI, in total?

A I've been with the FBI since June of 2000. So, coming on 12 years.

Q And can you describe your current duties as a senior forensic scientist?

A As a senior forensic scientist my main job is, quite frankly, being the FBI's lead explosive scientist. So, I manage explosive research projects, I assist in training of forensic examiners in the field of explosives and devices, and assist with the policy issues for the FBI and areas of explosives and IAB.

Q Can you tell us a little bit about your educational background?

A Yes. I have a bachelors in chemistry and I have a masters in chemistry with a material science and engineering minor and I have a Ph.D. in inorganic chemistry.

Q Can you tell us about the training you've received from the FBI?

A When I joined the FBI, I was trained to be a forensic examiner and that means I'm trained to examine bombing crime scenes, to analyze the evidence from those, to write reports, to make assessments, and to testify in court.

As part of that training we're sent to special classes dealing with explosives, we're given training in the admin aspects of chains of custody and how to write reports, and also given training in courtroom testimony.

Q Have you taught courses?

A Yes. I've taught numerous courses in explosives, improvised explosive devices, explosive science. I was a professor before I joined the FBI and I taught masters courses in explosives and explosives engineering.

Q Have you published papers and reports on explosives?

A Yes, I have.

Q What kind of topics?

A The majority of my papers deal with improvised explosives. Those are the explosives that can be produced from readily-available commercial ingredients and products. Also, some explosives engineering papers, papers on explosive devices.

Q Have you ever testified as an expert in court?

A Yes, I have.

Q How many times?

A I've testified four times in Federal Court and in three State Court cases.

MS. BERGER: Your Honor, at this time the Government offers Dr. Yaeger as an expert in the analysis of forensic explosives.

MS. CARVLIN: No objection, Your Honor.

THE COURT: All right, I'll receive him as such.

Go ahead.

MS. BERGER: Thank you, Your Honor.

Q All right, Dr. Yeager, let's start with the basics.

What is an explosive?

A An explosive is a material that basically is capable of producing superheated gasses. It decomposes very quickly and it produces high-pressure gasses that expand violently against the environment.

Q And what does an explosive actually do?

A An explosive combusts at a very rapid rate. We're all familiar with fire. Basically, an explosive is something that has identical chemistry to fire.

An explosive combines fuel and oxygen, produces fire within a fraction of a second, and that produces the superheated gasses that expand violently against the environment. It produces the explosion.

Q Now, are explosives categorized by how they release that energy?

A Yes. We break explosives into two categories. We have low explosives and high explosives.

Q And can you give us some examples of low explosives?

A Low explosives are the lowest and slowest release of energy; still violent, but on a relative scale the slowest. They are pyrotechnics. So, a firecracker would be a low explosive. They are propellants, such as the propellant in a bullet. That's a low explosive. So, it releases its energy a little bit slower.

A high explosive is something that releases its energy instantaneously and destructively such as C-4, TNT, dynamite, the things that we think about when we think about explosives.

Q Now, you mentioned bullets.

Dr. Yaeger, do firearms create an explosion when they're discharged?

A The propellants in a bullet creates an explosion, and that explosion produces the gasses that then propel the bullet down the chamber. So, there is an explosion in the first part of that interaction.

Q And is that the case for all types of guns?

A Yes. All, all guns work on the same principle; you have a propellant of some sort that's ignited, that explodes and produces a controlled release of gas, that's then harnessed to propel whatever the projectile is.

Q What about a rocket launcher? Would that also create an explosion?

A Yes. Because you are launching the rocket, so there is a propellant in there that is also exploding, producing these controlled gasses that then do the work of launching whatever your projectile is in that case.

Q I believe you testified earlier than an explosive uses both an oxidizer and a fuel; is that correct?

A That is correct.

Q What can be used as an oxidizer?

A An oxidizer, from a chemical perspective, is a chemical that has the ability to release oxygen quickly and to support a combustion. So, probably the oxidizer everyone in the courtroom's heard about is ammonium nitrate because from the Oklahoma City bombing it gained a lot of publicity and press.

Ammonium nitrate is a chemical packet of oxygen. It is capable of releasing oxygen in a fraction of a second. Now, when that's mixed with something like a fuel, a fuel that we commonly burn for energy in society, diesel, you get the explosive called an foe because there's a combination of that oxidizer and the fuel.

Q And are there other things that can be used as fuels?

A Yes. Anything that can sustain combustion, anything that can burn, can be a fuel for an explosive. So, diesel, kerosene, gasoline, things that we burn for energy.

And also, things that our body burns for energy. So, we digest sugar and starches. All of those have the base elements that are needed to produce combustion, and so they can also be used as a fuel in an explosive.

Q Dr. Yaeger you testified earlier about improvised explosives. Can you tell the jury what you mean by an improvised explosive?

A Well, I mean that in comparison to what you can get legitimately. There are commercial explosives designed for rock-blasting, coring and mining, there's military explosives designed for warfare, and then there's improvised explosives.

Improvised explosives are explosives that can be produced from readily-available ingredients and, typically, commercial products. So, you can go into the hardware store, the grocery store, you can buy some of them online. So, it's an explosive that ostensibly someone can put together on their own from these...

(Noise heard in courtroom.)

THE COURT: What is that?

MS. BERGER: I have no idea, Your Honor.

THE COURT: Whoever's got that thing, take it out, please.

(Complies.)

MS. BERGER: Sorry about that, Doctor. You were saying?

THE WITNESS: I was saying something, yes.

THE COURT: I think it was about the World Cup soccer game.

THE WITNESS: Yeah, sounds like that aren't good in my profession, so...

A An improvised explosive is something that you can put together from ingredients that are readily accessible to the general public.

Q Now, are explosives categorized based on their sensitivity?

A Yes.

Q What are the different categories?

A There's three categories of explosives and it's very important to understand the sensitivity of an explosive because that dictates how it's handled.

If something is really supersensitive, you have to be really concerned with it because it's dangerous, whereas other explosives are much more robust, which is why the military can carry around pounds and pounds of some of these things and not worry about them going off when they're being shot at. So, we break explosives into categories defined on how sensitive they are.

So, there's primary explosives. Primary, number one. And that's the number one threat, the most dangerous, the most sensitive, the easiest to ignite. These are things that even a small bit of energy, such as shuffling across a carpet and producing a spark, a static spark, sometimes that's enough energy to get those to go off.

Then there's secondary explosives. They're a level below in sensitivity. They're much more robust, they're much safer. Typically, to get a secondary explosive to go off, you need to put a little bit of explosive next to it and hit it with that much energy. Secondary explosives are things like C-4, TNT, things that we hear about in the movies and Warner Brothers and other places like that.

Finally, there's tertiary explosives. They are really inert and robust. They are used in coring mostly, mining, blasting. They are things that require a big hunk of explosives next to them to get them to go off. They're really, really very stable.

Q Dr. Yaeger, in an explosive device, what actually contains the primary explosive?

A An explosive device typically is going to use a primary explosive as an initiator. We refer to that as a blasting cap or a detonator. That is the explosive that sets off the whole chain of events and sets off the bomb.

It's typically a small tube of explosive. A couple of grams, very small quantities. It's typically in an aluminum tube and there's a source of energy that goes in that creates heat next to that explosive. It detonates and that sets off the rest of the bomb.

Q Can you purchase detonators?

A If you are a licensed blaster or if you're in the military, there are legitimate places to purchase detonators. They're used in legitimate applications; however, they're not something that's available to the general public.

Q Assuming you don't have a license to purchase a detonator, can you actually make a detonator?

A Yes, detonators can be made. It's a dangerous undertaking, but they can be made.

There are primary explosives, the supersensitive explosives that you can improvise yourself from readily-available ingredients and there's ways of introducing energy, such as a piece of fireworks fuse. And when you light that fuse, that fire can go into the tube of that explosive, and that can be enough energy to initiate it.

So, you can produce home-made detonators.

Q And what contains, in an explosive device, what contains

the secondary explosive?
A The second explosive is typically, in an explosive device, the main charge because when an explosive device is made there's charge that's designed to produce the big explosion.

You're not going to find many devices filled with pounds and pounds of primary explosive because it's so dangerous. Not to say it hasn't been done, but terrorists shy away from doing that, criminals shy away from doing that because there's a good chance of them not getting to their target with that material.

So, the secondary explosive is typically what's the main charge in the bomb because that is safer to jostle around, to move, to transport and to do other things with.

MS. BERGER: I'm going to show you, if I can, Your Honor, what's already been admitted in evidence as Government's Exhibit 252.

(The above-referred to Exhibit was published to the jury.)

MS. BERGER: And this is the first page, I'm going to flip briefly through this.
Q Have you seen this before?
A Yes.
Q When did you first see this?
A I believe that came across my desk in September of 2009.

Q And as a whole, what is contained in that document?
A That document contains nine pages of bomb-making notes.
Q Do these notes contain information pertaining to primary explosives?
A Yes, there were sections of those notes related to primary explosives.
Q And which primary explosives?
A The notes contained two primary explosives. The one was acetone peroxide. We also refer to that sometimes as TATP, which stands for triacetone triperoxide. To keep it short, I'll say acetone peroxide. That was the one explosive, the primary explosive.
The other was HMTD, I won't bother going into what that's an abbreviation before, even chemists don't use it as much, it's a longer organic name. HMTD and TATP were the two primaries in the primaries in the notes.
Q And can you just direct me to where in the notes it refers to a TATP?
A Can I pull out the sheet that I have?
Q Yes, of course.
A I have a copy of the notes here.
(Pause in the proceedings.)
A TATP is first mentioned on page 1 of the notes, in the bottom section, and it goes over onto page 2 of the notes.
Q And I am pointing my pen on the area here (indicating)

where it says: Acetone peroxide.

Is that where it starts talking about TATP?

A Yes, that is it.

Q Dr. Yaeger, what are the ingredients of TATP?

A There's three ingredients that are needed to make TATP or acetone peroxide; one is acetone, the other is hydrogen peroxide, and the third is a strong acid, which gets the first two chemicals to react together to form this material.

Q And are those three ingredients listed somewhere in these notes?

A On the very first page, all these of those are listed.

Q And can you just point on the screen where those are listed on this first page?

A If you go down to the very bottom, you can see on the left, acetone, H_2O_2 is hydrogen peroxide and then, HCL is hydrochloric acid, that's the strong acid I was referring to when I said a strong acid was needed.

Q And Dr. Yaeger, where did you get the ingredients for TATP?

A All of these three ingredients are available in commercial sources. Acetone is used for cleaning paint brushes. A hardware store will sell acetone. It's also used in certain fingernail polish removers, so a drugstore will carry that.

Hydrogen peroxide is available in a number of sources. Grocery stores, pool supply stores, beautician supply stores and a variety of others.

Hydrochloric acid is also commonly referred to as muriatic acid. That is something that's available, again, in a pool supply store for cleaning concrete. It's also available in certain toilet bowl cleaners. I think The Works and Snowball are two that contain hydrochloric acid.

Q You testified about hydrogen peroxide.

Can you just use regular hydrogen peroxide that you use at the drugstore?

A The regular peroxide in a drug store is, typically, about 3 percent peroxide, which means it's 97 percent water. It can be used, but it's really not a very good product; that doesn't have a lot of reactive material. So, although theoretically possible, it's really not a very good choice.

Q And are there other products that would contain a more concentrated version of hydrogen peroxide?

A Yes, the next line of products is hair dyes. As I was mentioning, a beautician supply store that sells developer for bleaching hair, that's a more concentrated peroxide; typically starting at 9 percent peroxide and going up all the way to 35 percent peroxide, depending on the product.

Q Okay. You also testified that the notes contain information regarding the production of HMTD; is that right?

A That is correct.

Q And what are the ingredients of HMTD?
A HMTD requires three ingredients. The hydrogen peroxide again and then, a weak acid, most likely a citric acid, and finally, hexamine.
Q What is hexamine?
A Hexamine is most commonly found in camp stove tablets. So, if you have a camp stove, some of them take what's called white coal. It's a burning tablet that you light on fire and it produces slow flame.
Q And are those ingredients also listed in these nine pages of notes?
A Yes, they are. And those ingredients are on page 5 at the bottom of the page.
MS. BERGER: We've lost the ELMO.
THE COURT: I'm sorry, forgive me.
(The above-referred to Exhibit was published to the jury.)
A At the very bottom you can see hexamine, citric acid or vinegar and then, finally, H_2O_2 which is hydrogen peroxide.
Q What does TATP actually look like?
A Both TATP and HMTD are white crystalline solids so they look like sugar flour, rock candy. Really nothing differentiates them from a variety of other things.
Q How safe are they to handle, HTMD or TATP?
A They are both very hazardous to handle. They can be

handled, but they are dangerous materials because they are primary explosives. So, just the wrong amount of energy can create initiation unintentionally.

Q Dr. Yaeger, have you tested the recipe for TATP that's contained in these notes?

A Yes, I have.

Q What did you do?

A I basically took the ingredients listed in the notes in the portions called out for and combined them in the fashion proscribed and produced acetone peroxide.

Q So, did it work?

A Yes, it worked.

Q And did you also make HMTD in accordance with the instructions in the notes?

A I have made HMTD many times. I did not follow these exact proportions because mine were very similar, so I knew this recipe would work.

Q How much TATP would this recipe yield?

A Theoretically, it could yield up to seven grams. Practically, we always lose something in chemistry, so it's more like five grams.

Q Could you make more TATP using this same recipe?

A Actually, recipe is a good analogy for this because this recipe is like any other recipe; if you have a recipe for two dozen cookies and you want four dozen, you double the ratios.

So, you can make as much as you desire just following these ratios and ingredients.
Q Dr. Yaeger, how large of an explosion would five grams of TATP cause?
A It's always heard to describe explosions without effects, without what we call witness material. In the open, you wouldn't see much of anything, but in terms of the energy, five grams of material would be enough to take off a hand, if it was in a hand.
Five grams of material, actually, could be lethal if it was encased in something that created fragments, it would produce enough energy to, basically, kill someone if one of the fragments penetrated the wrong area.
Q And again, is TATP often used in connection with another type of explosive?
A Typically we see TATP used as an initiator to set off a secondary explosive. As I said, it is a primary. So, we see it used to set off less sensitive explosive charges.
MS. BERGER: Your Honor, if I may show the witness what's been marked for identification as Government's Exhibit 113.
THE COURT: Yes, go ahead.
(The above-referred to Exhibit was published to the witness.)
Q Dr. Yaeger do you recognize this?

A Yes, I do.
Q What's contained on this disk?
A That disk contains three video files of different explosions.
Q And have you watched all of these video files before testifying today?
A Yes, I have.
MS. BERGER: Your Honor, the Government would offer Government's Exhibit 113 at this time and the videos that are on it.
MS. CARVLIN: May we confer, Judge?
THE COURT: Yes.
(Pause in the proceedings.)
MS. CARVLIN: No objection, Your Honor, thank you.
THE COURT: Received.
(Government's Exhibit 113 was received in evidence.)
MS. BERGER: I'm going to start by showing you what is called Government's Exhibit 113-A.
Your Honor, if I could try to publish this for the jury? It will be a video.
(The above-referred to Exhibit was published to the jury.)
Q Dr. Yaeger, what are we going to be watching here?
A It if it's where the arrow is pointed, that's going to be a video of 30 grams, which is approximately one ounce,

slightly above one ounce of TATP, being initiated with a hot wire. And when I mean hot wire -- when I say hot wire, what I mean is a filament. Like a Christmas tree light bulb. If you take a Christmas tree light bulb and you break off the glass and expose the filament, when it glows, that's heat.

So, the video contains a Christmas tree light bulb covered with approximately one ounce of TATP and then, someone will initiate from a distance. It's on top of a cinder-block block as witness material.

(Video played for jury.)

(Video stopped.)

Q So, Dr. Yaeger, that white powder we saw, what was that?
A That was TATP, acetone peroxide.
Q Dr. Yaeger, as part of your job with the FBI, do you study what type of explosives have been used in past bombing attacks?
A Yes, that's a -- a good portion of my job is looking at past bombing attacks and interfacing with different Governments, trying to understand what was used.
Q Why is that important for you to do?
A One of the things we do in monitoring the bombings overseas and domestically is to try to understand what kind of explosives are being utilized, what people are using to produce them, how dangerous they are, how we can mitigate them, how we can train bomb squads to deal with them, and how

we can train and actually try to interdict them. So, it's very important for us to understand all bombings.
Q Based on this experience, are you aware whether TATP has been used in recent bombings or attempted bombings?
A Yes.
Q And what are you aware of?
A The most recent high-profile device that utilized TATP was the underwear bomb. The Christmas Day bomber. That was the initiator. We found TATP residue. That was the initiator in that device.
Q Now, turning back to the notes, is there information in the notes regarding a secondary explosive or a main charge?
A Yes. If you go to page 7, and page 8, there are a variety of secondary main explosive charges mentioned.
MS. BERGER: So, I'm on page 7. If you could just publish it, Your Honor.
(The above-referred to Exhibit was published to the jury.)
Q On page 7 here, what are you referring to, Dr. Yaeger?
A I'm referring to the bottom part of the page. There's a series of what looks like boxes and in those boxes there's chemical nomenclature with numbers next to the chemical nomenclature.
Above the boxes is a list of abbreviations of fuels. So, to understand this chart, go back to the chemistry of

explosives, I need two things for this main charge. I need an oxidizer, so I need a chemical source of oxygen, and; I need a fuel, something that can burn with the oxygen that's being released.

The first part, starting with D, diesel; WP, wood powder, all the way down to V, Vaseline, are a list of fuels. Those are things that can be combined with oxidizers to produce explosives.

In a box, ammonium nitrate is mentioned, in the center box on the top. And right next to it, NH_4NO_3 is the chemical abbreviation for ammonium nitrate.

So, what is contained in this box is the first part, different ammonium nitrate mixtures, with some of these fuels.

Below that is urea nitrate.

In the last two boxes, urea nitrate is another explosive.

Then, on the next page.

(The above-referred to Exhibit was published to the jury.)

A The same occurs. There are combinations of fuels and oxidizers and the very bottom, some very common ones. Potassium chlorate, KCL-O_3. That's the prime ingredient in firecrackers or flash powders.

And then, finally, H_2O_2. Hydrogen peroxide is mentioned, mixed with flour and sugar.

Q Dr. Yaeger, the notes reference flour and I believe on page 7, they also reference ghee oil; is that correct?
A That is correct.
Q What are flour and ghee oil used for?
A They are used, basically, as cooking ingredients.
Q And in an explosive, what are they used for?
A They are both fuels.
Q Now, if you combined flour and ghee oil, just the two of them, would that actually create an explosive?
A No. You would have, basically, two fuels combined together, but there would be no chemical source of oxygen, which is key for any explosive.
Q And do the notes refer to any potential oxidizers that could be used in connection with flour and ghee oil?
A Yes, going back to page 8, it is outlined the hydrogen peroxide and flour.
Q Now, what form, if you were to make one of these main charges, what form would it be in?
A It depends on the charge you're making. Most of these are going to be mixtures of two solids, two powders, so you'll have a powdered explosive. And they could be anything from white to dark gray, depending on the color of your fuel and the oxidizer.
The only real outlier here would be the peroxide flour, because you're starting with a liquid and mixing it

with a solid. And there's a slight reaction that occurs, so it bubbles a little bit, it gets sticky, it's gelatinous. It's not really a liquid, it's not a gel. I mean, the only term it's, not scientific, is "goopy," basically.

Q Dr. Yaeger, did you following the recipe in the notes to make a main charge?

A I've made a variety of these charges throughout the years, yes.

Q And if you follow, using the proportions and the mixtures in the recipe, can you actually create a main charge?

A Yes. These notes would produce valid main charges. The ratios are correct.

Q And taking, for example, the peroxide flour main charge, what quantity would these notes produce?

A Going to page 9, on the very top of the page, this is the only place that solid numbers are provided. There is a mention of 4,000 H_2O_2, which is -- my interpretation -- 4,000 grams. Four kilograms. It's over eight pounds.

And it's mixed with 1143. 1143 would be the grams of whatever fuel. Looking at these ratios, it makes sense. In terms of making explosives, that would give approximately 5,000 grams, which is about 11 pounds.

Other ratios here go up to almost 19 pounds. So, you're talking 10- to 20-pound kind of bracket for the ratios.

Q Dr. Yaeger, if you were to detonate 10 to 20 pounds of this kind of a main charge, what kind of an explosion would you create?

A Again, the only way to relate that is against witness material. Ten pounds would create a crater on the ground in open air. Ten pounds would tear a car to pieces, remove the roof, punch holes in the floor boards. Ten pounds will destroy a room like this. Ten pounds will bring down portions of the ceiling and create tremendous damage. It's all defined in what's in the surroundings.

So, ten pounds is a sizable explosive charge.

MS. BERGER: I'm going to show you what's in evidence as Government's Exhibit 113-B, it's the second video we'll watch.

(The above-referred to Exhibit was published to the jury.)

Q And are you able to tell, just by where my arrow is, what we'll be seeing?

A Yes, that's going to be a one kilogram charge, which is 2.2 pounds, of an ammonium nitrate oxidizer mixed with aluminum to produce a secondary explosive charge.

The witness material in that video is going to be a shed. Just a standard Home Depot shed, bought off the lot.

Q And are these ingredients that are contained within the notes?

A Yes. On page 7, ammonium nitrate aluminum is specifically called out.

Q And I believe you testified it was one kilogram?

A Correct. A little over two pounds.

Q So, it's less of an explosion than the notes would generate?

A About a fifth of the quantity.

(Video played for jury.)

(Video stopped.)

MS. BERGER: And now showing you Government's Exhibit 113-C.

(The above-referred to Exhibit was published to the jury.)

Q Can you just tell us what we're going to be seeing here?

A Yes, this is going to be a slow-motion video. So, basically, the event's slowed down so it's easier to see because explosions happen fairly quickly, as we've seen. And this is going to be one liter of a mixture of concentrated peroxide with flour.

Q So, this is that same peroxide flour mixture you were testifying earlier about in the notes?

A It's analogous. The ratios are a couple percentage rates off, but it's analogous.

(Video played for jury.)

(Video stopped.)

MS. BERGER: I'm just going to start this one over.

(Video played for jury.)

(Video stopped.)

Q Dr. Yeager, once you have a detonator and a main charge, do the notes contain instructions about how to combine them to actually make a bomb?

A There are references throughout the notes that talk about how to combine them, yes. The main instance is on page 3.

(The above-referred to Exhibit was published to the jury.)

A And in the very center of page three is a pictorial representation of a detonator. And it's basically a tube and the tube can be, in a commercial detonator, the aluminum tube.

To make one's own detonator the tube can be anything from crimped copper tubing, a pen, the top of a Sharpie marker, a syringe, rolled up pieces of paper, anything that's tubular, basically. And that houses the primary, the very sensitive explosive.

And at the very top there's something called light wire. And that is a designator for that filament I talked about earlier; for example, the Christmas tree bulb. So, this shows the construction of the detonator.

And then, on page 7.

(The above-referred to Exhibit was published to the jury.)

A At the very top of the page, there is instructions written out:

"For every detonator use at least three to four grams of sensitive materials."

My interpretation of sensitive materials is primary explosive, the most sensitive of the explosives, because that's what we see utilized in detonators.

Q And do the notes contain information about how you would actually ignite this kind of device?

A Going back to page 3, there is a tie-in for igniting.

(The above-referred to Exhibit was published to the jury.)

A Under the picture of the detonator are two diagrams, and they are batteries because what you need to make the light bulb glow to produce heat is power, and a battery has more than enough power to do that.

So, you -- the two leads coming off of the light bulb have to make contact with some sort of battery or some sort of power source and here it notes power sources being used and, actually, it notes the best way to put the batteries together so you have the best chance of initiating the detonator.

Q Dr. Yaeger, if you were to explode three grams of TATP together with a two-liter bottle size of main charge in a subway car, what could you expect to happen?

A Explosions are very violent events, as seen in the videos. In the open air, pressure dissipates pretty quickly, but it can still be lethal.

All bombs have two main hazards, one is air blast. When an explosive goes off, it pressurizes the air and actually sends a pressurized pulse of air outward. Anyone who has seen a picture of the Murrah building in Oklahoma City has seen the divot cut out of the building. That's from the air blast. That's from the energy of just pressurized gasses alone.

The second thing that happens is fragmentation. Anything that is near that expanding field of gasses, that explosive, gets hit and launched like a bullet and that fragmentation goes on a long, long way.

The worse case scenario for an explosion is an enclosed environment because the gasses build up and they have nowhere to go or vent quickly. So, your example of a subway car, the explosive would produce a huge amount of pressure, it would fragment anything in proximity with it, that pressure would go outward and -- what size were you talking; a 12-liter bottle?

Q From the notes, I believe you had testified that would yield about three grams of TATP. So, three grams of TATP and then, a two-liter bottle size of the main charge?

A Yes, the air blast alone, if you were within a couple feet of that, would kill you.

Fragmentation, would retain lethality throughout the whole subway car. And, in fact, the subway car would be breached. You would expect walls to be knocked out. You would expect severe damage to anything in proximity.

Q When you refer to fragmentation, what are you referring to?

A There are two kinds of fragmentation. One is, bombers often put fragments of something around their main charge. It can be ball bearings. It can be nails. It's something designed for that explosion to hit and send outwards with violence.

But there's secondary fragmentation. So, if an explosive is sitting on a table, it will fragment what it's sitting on, and that can become lethal projections as well. So, if it was sitting on a subway seat, that could become a fragment. And that could send fragmentation outwards.

Q And perhaps this is an obvious question, but what would be the effect on somebody wearing a suicide vest made of that material?

A I, have in the course of investigations, dealt with many suicide bombers and I have seen the effects up close and personal.

Explosives on someone's person -- I'm trying not to be too graphic here, but -- they basically destroy the body. So, not much is left of the torso. The head and arms and legs

are usually launched. It's devastating.
Q Dr. Yaeger, are you aware of any recent bombings or bombing attempts involving TATP as the detonator with one of the main charges listed in these notes?
MS. CARVLIN: Objection.
THE COURT: Sustained.
Q Dr. Yaeger, have you trained people on how to make TATP?
A Yes, I have.
Q How long would it take you to train somebody, with no experience, on how to make TATP?
A I had to train a group of people in that situation, for a particular reason, and it took me about a day to give them the rudiments of what they needed to make the TATP.
Q And how long would it take you to train somebody, with no experience, to make a main charge?
A That would take much less time because main charges are not as sensitive and dangerous. I could do that within an hour.
Q And how long would it take you to train somebody, with no experience, to make an entire improvised explosive device?
A With the primary and a main charge, a rudimentary fusing system? A couple days.
MS. BERGER: No further questions.
THE COURT: Thank you, Ms. Berger.
Shall we take our break?

MS. CARVLIN: I have no questions, Your Honor, so.

THE COURT: We'll take our break now.

Dr. Yaeger, you're excused, have a good day.

We'll break for ten minutes. Don't discuss the case.

All rise.

(Jury exits at 11:28 a.m.)

(In open court.)

(The following occurs outside the presence of the jury.)

THE COURT: Okay, see you in ten minutes.

(Recess taken at 11:28 a.m.)

(Continued on following page.)

(Court resumed); (Jury not present)

THE COURT: What is next?

MR. LOONAM: The search agent, Elizabeth Rosato he.

THE COURT: Let's bring her in.

(The following took place in the presence of the jury)

THE COURT: All right. Would everybody but the witness please be seated.

E L I Z A B E T H R O S A T O,

having been first duly sworn/affirmed, was examined and testified as follows:

THE CLERK: Please state and spell your name for the record.

THE WITNESS: Elizabeth Rosato R-O-S-A-T-O.

DIRECT EXAMINATION

BY MR. LOONAM:

Q Good morning.
A Good morning.
Q What do you for a living?
A I'm a special agent with the Federal Bureau of Investigation.
Q How long have you been a special agent with the FBI?
A Approximately 15 years.
Q And what your current assignment as special with the FBI?
A Supervisory agent at FBI headquarters in Washington, D.C.

Q And directing your attention to September 14, 2009, did you take a part in a search of a residence that day?
A Yes, I did.
Q Was that search conducted pursuant to a court authorized warrant?
A Yes it was.
Q Was the residence 29-49 137th Street Apartment 6A?
A That is correct.
Q Do you know who resided at this apartment?
A I believe Adis Medunjanin and several other people.
Q Do you know the relationship of the several other people who lived at the residence with Adis Medunjanin.
A No, I do not.
Q And what was your assigned responsibility during the course of the search?
A I was the team leader for the search warrant execution.
Q As the team leader what were your responsibilities?
A Access the apartment, take a look at the search warrant, what we were there to check, and make sure all the paperwork and evidence was collected in proper form.
Q And what time was this search executed?
A Approximately 2:30 a.m.
Q Is that typical?
A No.
Q Do you have a specific understanding as to why the search

in this instance was conducted at such an early hour?
A No, I do not.
Q Did you make first entry into the apartment?
A No, I didn't.
Q Who did make first entry into the apartment?
A A SWAT team did.
Q What is a SWAT team?
A Our Special Weapons and Tactics Team.
Q And what is a SWAT team's job when they make first entry into an apartment?
A To make sure any threat that would be present in the apartment or residence would be addressed appropriately.
Q And when you say to -- is to render the apartment safe, is that a term that is used?
A Somewhat, yes.
Q And can you describe what is entailed in rendering an apartment safe?
A Similar to any other arrest or search warrant, we make sure the residents are safe, and accounted for and we know who is in the apartment, and if there's any threat that is presented to the agents that we would be following on to go in and do their job.
Q During the course of rendering a scene, safe and secure, are people often handcuffed?
A It does happen, yes.

Q And are you aware of whether the residents of apartment 6A were restrained in connection with the entry by the SWAT team in this instance?
A I cannot recall that, no.
Q I'm going to show you what's marked as Government Exhibit 26 --
MR. LOONAM: For the witness only, Your Honor.
THE COURT: Yes.
Q (Cont'd): Prior to your testimony here today, did you have an opportunity to review Government Exhibit 26?
A Yes, I did.
Q What is it?
A It's a cell phone.
Q Do you know where this cell phone was obtained from?
A It was taken from that apartment and during that search.
Q And did you inventory this cell phone?
A Yes, I did.
MR. LOONAM: The government moves Exhibit 206 into evidence.
MR. DINNERSTEIN: No objection.
THE COURT: Received.
(Government Exhibit 206 received and marked in evidence).
MR. LOONAM: No further questions.
THE COURT: Any cross.

MR . DINNERSTEIN: Yes, Your Honor.

THE COURT: Go ahead, Mr. Dinnerstein.

MR . DINNERSTEIN: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. DINNERSTEIN:

Q Now, Agent Rosato, you said that you were the team leader on December 14th, 2009?

A For the search, I was, yes.

Q And you said that the search occurred at, approximately 2:30 in the morning?

A That's correct. That is when the search team made entry, yes.

Q And you had no reason to as to why it was being conducted at that particular time; is that correct?

A That's correct.

Q And had you spoken to the case agents in this particular case prior to the search?

A I don't recall so.

Q Do you know who the case agent is?

A There were several case agents that I was dealing with at that time.

Q Do you know the names of any of the several case agents that you were dealing with?

A Garicito (ph), perhaps, Farbod Azad.

Q Agents Azad is the gentleman sitting in the courtroom?

A Yes, he is.
Q And you spoke about the SWAT people who came into the building prior to your entry into the apartment; is that correct?
A That's correct.
Q And where were you when the SWAT team came into the building?
A I was downstairs in the lobby.
Q And of course, the SWAT team also came through the lobby; is that correct?
A That is correct.
Q And they then took an elevator; is that correct?
A I don't recall that.
Q Now, could you describe how many members of the SWAT team were there?
A I don't recall that.
Q Do you have any -- what is the typical SWAT team?
A I am not on the SWAT team, so I wouldn't be able to speak to that.
Q Could you say whether there were more than five people in the SWAT team?
A I can't recall.
Q Now, after the SWAT team entered, what was the next thing that you did?
A The next thing that I did was wait until the residence

was secured and then I went in with my team to set up and begin the search.

Q How many people were on your team?

A I had two other members.

Q And now did you notice whether or not the door of apartment 6A was broken?

A Yes, it was.

Q And do you know how the door got broken?

A No, I don't.

Q Do you have any notes that indicate whether the door was breached?

A Yes, I do.

Q And what does it mean for a door to be "breached"?

A Not open typically by a key or entry. It would be a forcible entry.

Q Did you have any indication of how the door was breached?

A No, I don't.

Q Do you have any notes as to how the door was breached?

A Yes, I do.

Q And what are those notes?

A If you have them I can refresh my recollection. I kept a log of all the events that happened.

MR. DINNERSTEIN: Can I show it just to the witness?

THE COURT: Yes.

Q Can you see?

A That, yes.
Q And how was the door breached?
A It says door breached by SWAT entry.
Q Does it mean that when the SWAT individuals came into the apartment they broke down the door; is that correct?
A Yes, that is correct.
Q Now, after you came into the apartment what time was it that you came into the apartment?
A Approximately 2:30 a.m.
Q And did you notice whether there were people in the apartment?
A I do recall that there were several people present but I don't know the specifics of it.
Q And there were also several agents; is that correct?
A That is correct.
Q About how many agents were there?
A Several. I believe that is reflected on my paperwork, if you are looking for a specific number.
MR . DINNERSTEIN: Can I show her the document?
THE COURT: Yes, go ahead. What is this, 3500 material?
MR . DINNERSTEIN: Yes. Excuse me, Your Honor.
3500-2. ER2.
Q How many officers were present?
A This is the paperwork specifically for the search. I

don't account for any other SWAT team members that were there. This is specifically for the search. It reflects myself, Special Agent John DeVona (ph) and two other bomb techs that were there and another investigative specialist that was part of my search team as well.

Q Now, you mentioned the case agent, was he also present?

A I believe he was, yes.

Q But he would not show up on your worksheet?

A No, because he was not part of the search team.

Q Now, you said something about bomb technicians; is that correct, were they part of the search team?

A Yes, they were.

Q How many bomb technicians were there?

A I believe there were two, according to my paperwork.

Q And what is the purpose of the bomb technician, what does he define, or she?

A The bomb techs for the purpose of this search were there to assist in looking at the apartment to see if there are any explosives or other items present, and also, to assist in taking explosives residue swabbings which we did collect that day.

Q When you say -- did you find any explosive devices in the apartment?

A I did not myself.

Q Do you know whether anybody in the team found any

explosive devices?
A We just collected explosive residue swabbing.
Q When you say you collected explosive residue -- I'm sorry, what was the word?
A Swabbing.
Q Swabbing. Did you determine whether or not there were explosive residue on those swabbings?
A We do not do that -- we don't do that saying onsite, no.
Q Well, so then what you took was swabbings with the hope that you would find explosive residue; is that correct?
A That is the intent of the swabbing, yes.
Q Now, did you find any acetone in the apartment?
A I don't recall.
Q Did you find any Ghee oil in the apartment?
A State that again, please.
Q Have you ever heard the term G-H-E-E oil?
A I believe there were some there. I don't believe it was collected. If it was it would be on my log.
Q You actually filled out an inventory of all the items that were collected?
A That were or were not?
Q That were collected?
A Yes.
Q Is there any indication and I'll --this also is GR 2. I will show it just to the witness.

A Umm-Humm.

THE COURT: Okay.

Q Is there any indication that any Ghee oil was recovered?

A If you could move the paperwork slightly, it's askew on the screen.

Q I'm sorry. That better?

A I don't see any listed, no.

Q Would it have been relevant to put down Ghee oil if you actually saw Ghee oil?

A I don't know.

Q Well, do you know whether or not Ghee oil could be used in an explosive device?

A That wouldn't be my area of expertise, no.

Q So it would have been the expertise of the two bomb technicians who were also present; is that correct?

A That's correct.

Q If they found something that they considered to be something used in an explosive device, they would have then based on what their job was give it to you, correct?

A Perhaps.

Q Now, was there hydrochloric acid found?

A I don't know that.

Q Is there anything in your inventory that indicated hydrochloride acid was found?

A No.

Q Is there any hydroperoxide recovered?
A I don't know.
Q Is there any indication from your record there was hydroperoxide recovered.
A I did not collect any as part of that search warrant, no.
Q Did you put anything down on your inventory?
A I don't see hydrochloric acid on the inventory, no.
Q Or hydrogen peroxide; is that correct?
A It's not listed on the inventory.
Q Or Acetone; is that correct?
A That's correct.
Q When you entered the apartment do you recall, other than the agents, how many people were there?
A I don't recall the total number, no.
Q Were there more than five?
A I believe so.
Q And were they handcuffed?
A I don't recall.
Q Can you describe what any of those people looked like?
A There was a number of males and there was a few females as I recall, but no I don't have a specific description.
Q When you say, "a number of males," how many males?
A Three.
Q And how many females?
A I don't recall.

Q Do you recall if you spoke with any of the females?
A Yes, I did.
Q And where did you speak to the females?
A I believe in one of bedrooms, possibly the living room.
Q And how many of the females did you speak with?
A Perhaps, one or two.
Q Did you notice whether or not either those people had a difficult time with the English language?
A No.
Q They spoke English fine?
A I don't recall. I believe so.
Q Do you recall if one of -- do you recall the approximate age of the people you spoke with?
A No, I don't.
Q Was one older than the other, do you recall that?
A No, I don't.
Q When you spoke with the people do you recall whether or not they were handcuffed or not?
A The female?
Q The female?
A No, I don't.
Q I'm sorry?
A I don't believe they were.
Q Now, the males, you said saw three males; is that correct?

A That is my guess, yes.
Q When you say your guess, you don't know how many males there were?
A I followed on after the initial entry and my job was the search. I remember -- I recall there were several males in the apartment. I cannot specifically say how many.
Q Did the males remain in the apartment when you were talking to the two females in the apartment?
A I don't believe so.
Q Do you know where they were taken?
A Where who were taken?
Q The males were taken?
A No, I do not.
Q Do you know if all the males were taken outside of the apartment?
A No, I don't.
MR. DINNERSTEIN: I have nothing further.
THE COURT: Thank you. Mr. Dinnerstein.
Any redirect.
MR. LOONAM: No, Your Honor.
THE COURT: Thank you.
You are excused. Have a good day.
THE WITNESS: Thank you.
THE COURT: Call your next witness.
MS. BERGER: I would like to read a short

stipulation into the record.

This is marked as Government Exhibit 320.

THE COURT: Received.

MS. BERGER: Approximately 2008 through January 2010, Naquib Jaji, N A Q U I B J A J I, resided 247 61 Ontario Drive, Aurora, Colorado, and the parties agree to the admissibility of the stipulation.

THE COURT: All right.

MR. BITKOWER: The government calls Aaron Spivack.

THE COURT: Good morning.

THE WITNESS: Good morning.

A A R O N S P I V A C K , having been first duly sworn/affirmed, testified as follows:

THE CLERK: Please state and spell your name for the record.

THE WITNESS: Aaron A-A-R-O-N, Spivack S-P-I-V-A-C-K.

MR. BITKOWER: May inquire, Your Honor?

THE COURT: Yes.

DIRECT EXAMINATION

BY MR. BITKOWER:

Q Good morning, sir.

A Good morning.

Q How are you currently employed?

A Special Agent with the Federal Bureau of Investigation.

Q How long have you been a special agent with the Federal Bureau of Investigation?
A Approximately three and a half years.
Q And what are your current responsibilities with the FBI?
A I investigate the sexual exploitation of children.
THE COURT: If you press the little green light.
MR. DINNERSTEIN: Okay.
THE COURT: Sorry.
Q Sir, I'm going to direct your attention to the afternoon of January 7th of 2010. Did you have the same responsibilities with the FBI on that day?
A No, sir, I did not.
Q What were your responsibilities on that day?
A I was an agent assigned to a surveillance squad, counterterrorism surveillance squad.
Q On that date were you assigned to surveil anyone in particular?
A Yes, I was.
Q And who were you assigned to surveil?
A A gentleman by the name of Adis -- and I'm going to mispronounce the last name, I'm sure -- Medunjanin.
Q And I am going to ask you, Agent Spivack, if you could look around the courtroom and tell me if you see Adis Medunjanin in the courtroom here today?
A Yes.

Q Could you point him out and describe an article of clothing he is wearing?
A He is sitting at the table in the back wearing a grayish suit, I think a blue shirt, and a beard.
THE COURT: Identifying the defendant.
MR. BITKOWER: Thank you, Your Honor.
Q On January 7th of 2010, Special Agent, did you work by yourself or on a team?
A I was on a team.
Q And can you tell the jury who else was on your team that day?
A Yes, sir.
It was myself, Special Agent Ted Rose, Detective Eddie Brandon (ph), New York Police Detective, Detective Arnie Nunez (ph), those are the agents present that day. A little bit later another agent, Michael Samelson (ph) showed up.
Q Were you conducting surveillance on foot or in a vehicle?
A This particular day we were in a vehicle.
Q Did you have your own vehicle or did you have to share a vehicle?
A We each had our own vehicles.
Q When did you begin your surveillance on that afternoon?
A We began at 1:10 p.m. that afternoon.
Q And where did you begin surveillance?
A In the vicinity of target resident which was 29-49 137th

Street, Flushing, New York.

Q When say the, "target residence," can you explain what you mean?

A Yes, we were assigned to surveil the defendant at his residence which was located in that building.

Q And did there come a time that anyone arrived at the apartment while you were watching?

A Yes.

Q And who did you observe arrive?

A Observed a team of FBI agents.

Q And can you approximate how many agents?

A Four or five, or three to five agents.

Q Could you recognize any of the agents?

A Yes.

Q Who?

A The case agent, Special Agent Farbod Aziz, as well as another agent whose name I don't recall.

Q Where were you observing from when you saw the agents arrive?

A I was observing from my vehicle. I had what was called th eye at that point in time, meaning I was the agent responsible for watching the entrance to the target residence, and from my vehicle I could see the agents coming up from the behind me, approaching the entrance to the residence.

Q And what, if anything, did you see the agents do?

A All I did -- all I saw them do is enter the residence and then a short some time later leave the residence.
Q And when you say, "a short time," can you approximate how long the agents were in the apartment?
A Maybe a few minutes. Not very long.
Q And after the agents left the apartment, did there come time that the defendant left the building?
A Yes, there was.
Q Who had the eye at that point?
A It was Special Agent Ted Rose.
Q And where were you parked at that point?
A I was with the other members of the team at our staging location which was at Toys R Us parking lot. Short distance away.
Q When you say, "a staging location," can you explain what you mean?
A Yes, sir.
At any given time if we're monitoring a particular residence we will have one or two people monitoring the residence, the eye. Everybody else is off the set at a nearby location, so that we can respond if the subject were to leave the residence or anything of that sort.
Q And did there come a time that you actually personally saw the defendant?
A Yes, sir, there was.

Q Immediately prior to seeing the defendant, without telling us what anyone told you, did you receive a radio call from anyone?

A I did.

Q Who did you receive a radio call from?

A Agent Rose.

Q Approximately what time was that radio call?

A According to my notes, approximately 3:47 p.m.

Q For the record, is there a Government Exhibit sticker there on the notes you are referring to?

A Yes, 3500-AS-1.

Q And what is that document?

A This is a surveillance log that was taken that day.

Q And did you prepare that log?

A No, sir, I did not.

Q And so when you're saying 3:47 p.m., that is what appears on the log?

A That is correct. My initials are next to it as well, so indicating that I had seen and agreed with the time, and statement written on the log.

Q And again, without telling us what the content of the call was, what, if anything, did you do in response to that call?

A As soon as the call came over the radio, I was already in my vehicle. I immediately started to head towards the target location.

Q And why did you do that?

A It was in response to my knowledge that the defendant was leaving the residence. Not knowing where he was going to go, it was our job to get in a position to follow him wherever he was going.

Q And where did you leave from?

A The Toys R Us parking lot.

Q Where did you go to?

A To the 2949 137th Street.

Q And when you reached 137th Street were you headed northbound or southbound?

A At that point I was headed southbound.

Q Can you tell the jury what, if anything, you observed once you reached 137th Street?

A Yes, sir.

As soon as I turned, I had to make a right on to 137th Street. As I was heading southbound, as soon as I turned on the road, the defendant was passing by me going northbound in a silver Nissan Altima that I knew to be his.

MR. BITKOWER: Your Honor, if I can show just the witness what's been marked for identification as Government Exhibit 49.2.

Q Is this on your screen, can you see this on your screen?

A Yes, sir, I can.

Q And what is this?
A This is a map of the Whitestone Expressway, a map that would be the vicinity of the subject of the location.
Q Are you familiar with this area of New York?
A I am, yes.
Q What borough is this in?
A This is in the Borough of Queens.
MR. BITKOWER: Your Honor, I am going to offer 49.2.
MR . DINNERSTEIN: No objection.
THE COURT: Received.
(Government Exhibit 49.2 received and marked in evidence)
Q Sir, can you point out where on this map the Whitestone Expressway is?
A Yes, sir.
This is where -- well, I guess this -- no, I don't want to touch the screen.
THE COURT: You never these before.
A (Cont'd): That is not familiar to me, but basically, is the road kind of going through the middle, top to bottom, middle of the map with 678 on it, Interstate 678 says it is the Whitestone Expressway.
Q And can you demonstrate, approximately, where on this map the defendant's apartment is?
A Yes, sir.

Towards the bottom of the screen there's a road that says Linden and I think it Linden Place I think is what it is. There you go. And that is the approximate location of the defendant's residence.

Q Where my pen is pointed?

A Correct, sir, approximately.

MR. BITKOWER: And Your Honor, if I can just show the witness what's been marked for identification as Government Exhibit 49.1.

Q Do you recognize what's in is this exhibit?

A I do, sir.

Q What is it?

A This is an aerial shot, an image of the staging area of Whitestone Expressway and the target location.

Q If I turn it the way I have just turned it, which direction on this exhibit would be north?

A Up would be north, sir.

Q The top?

A Yes.

Q And so you said -- is this the same, is this also in Queens, New York?

A Yes.

Q And again, are you familiar with the streets and locations depicted on this image?

A Yes, sir, I am.

Q And is it a fair and accurate representation of where those buildings and streets are?
A Yes, sir, it is.
MR. BITKOWER: Your Honor, at this point I will offer 49.1.
MR . DINNERSTEIN: No objection.
THE COURT: Received, and the top is where the sticker is?
THE WITNESS: Yes correct.
(Government Exhibit 49.1 received and marked into evidence)
Q Sir, can you point out on this image, again, do you recognize, first of all, which is the defendant's building, which is the residence?
A Yes, I do.
Q If you press on the screen it should be a yellow mark.
A Okay. Right in there. That's not exactly where I pressed, but that is the street -- the street just to the left of those two dots is 137th Street. So, basically, those two dots would be, my opinion, the target residence.
Q So, if I put my pen here, is my pen roughly on top of 137th Street?
A That is correct.
Q Would the defendant's building be to left or to the right?

A To the right which would be to the east.
Q You also mentioned you were in a staging area at Toys R Us parking lot?
A Yes.
Q Where would that be?
A Right here. Right in there (indicating).
Q The dark item here?
A Yes, sir.
Actually, where the yellow dot is, the second group there is probably where I was parked.
Q Where this yellow dot right here?
A Probably a little bit above of that, that is where we approximately were staged.
Q First of all when you saw the agents going into the apartment earlier where were you staged at that point?
A Almost directly across from the entrance to the target residence.
Q And then when you referred to receiving a radio call and proceeding to the apartment from Toys R Us, can you tell us what route you took to get there?
A Yes, sir. This road that kind of goes underneath -- really not correct -- where I pointed -- it goes underneath the Whitestone Expressway, I believe it's Linden Place. I would have left the Toys R Us parking lot. I would have gone underneath the Whitestone Expressway on Linden and then I

would have taken the access road to 137th Street.
Q If I can demonstrate. This is my pen again on it further up?
A Yes, it is.
Q And is this road that crosses underneath the Whitestone, is that Linden?
A Correct.
Q And then you said you took a left on the acces road that's referring to this road, southeast of the Whitestone at this point?
A Yes, sir.
Q And then you identified this before as 137th Street; is that correct?
A Yes.
Q And approximately, how long did it take for you to get from the staging area to 137th Street when you received that radio call.
A I would have to venture to say it was probably under a minute. It was quick.
Q And you say you saw the defendant passing you in his car that night?
A Yes.
Q And what direction was he headed?
A He was headed north.
Q Would that be toward Whitestone?

A Yes.
Q And what, if anything, did you do when you saw the defendant pass you in his vehicle?
A As soon as the defendant was out of my sight, my rearview mirror when, I didn't think he could see me I made a U turn and proceeded to follow the defendant.
Q And when you say you didn't think he could see you, why was that important to you?
A Given our covert capacity on the surveillance team, I didn't want to blow my cover. If he were surveillance conscious and he saw me making a U turn, he may assume that he was being watched. So I waited until I didn't think that was a factor and I made a U turn and proceeded to follow.
Q And again, without telling us what anyone else may have told you, what did you do next?
A I proceeded to follow him on the Whitestone Expressway.
Q And which direction on the Whitestone Expressway?
A Heading north.
Q And would that be toward the top of this image?
A Correct, towards, I think, the sticker.
Q And were you able to actually catch up to the defendant's vehicle while it was moving?
A While it was moving, no.
Q Can you describe what happened after you -- what road or roads did you follow him on?

A Strictly on the Whitestone Expressway.
Q And headed northbound?
A Headed northbound.
Q Can you describe what it is that happened when you headed on the Whitestone?
A At some point after a few minutes I observed an accident involving the defendant's vehicle and at least one other vehicle.
Q And where was this that you observed that accident?
A This would have been happened just south of, I think it is, Exit 16, which is the split from -- I think the Whitestone Expressway continues and then I think another road becomes a Cross Island Expressway.
Q And I'm going to switch back to Government Exhibit 49.2. Can you demonstrate where on Government Exhibit 49.2 you came upon this accident?
A Yes, this would have been, approximately, that location up there on the Whitestone Expressway.
Q Indicating where I 678 intersects with another road?
A Correct. It would be just south of that actual split.
Q And approximately, how long was it from when you encountered the defendant heading northbound on 137th Street and when you came upon the scene of the accident?
A That was, approximately, eight minutes.
Q And can you describe what it is you observed when you

arrived at that scene?
A Yes, sir.
When I arrived at that scene I observed the defendant's vehicle, another vehicle that were, obviously, in an accident, and then I observed the defendant, Special Agent Rose, and another individual whom I don't know were off the side of the road. They were not on the medium itself, but they were off of the -- off of the road.
Q When you came upon the scene did you get out of your car right away?
A No, not right away. No, sir.
Q Why not?
A At that point, Agent rose was speaking to the defendant. I didn't know what Agent Rose was saying. Again, knowing that I'm acting in a covert capacity, I don't want to blow our cover. I also want to keep officer's safety in mind, but I didn't know if Agent Rose had come up with some kind of ruse, what he was telling the defendant. I didn't want to blow our cover, so I waited and observed until I felt it was necessary to get out of the car.
Q And did there come time you actually got out of the car?
A Yes, I did.
Q And why did that happen?
A After watching this for maybe a minute, I observed Agent Rose make a handcuffing gesture to the defendant. He had the

defendant turn around, put his hand behind his back. At that point I knew that Agent Rose was going to be arresting the defendant, so I got out of my car and to assist.

Q And can you describe what you did to assist?

A Yes, sir.

I ran up from my car. I wasn't far away. I ran up and then I proceeded to help Agent Rose with actually handcuffing and called double locking the handcuffs.

Q What did you do next?

A At that point I escorted the defendant across the road to a kind of a clearing where the road splits. There was, like, a grassy kind of dirt patch clearing that I took the defendant to, so I could kind of stage him there. I frisked him and that is where we waited for an ambulance.

Q Can you describe when first encountered the defendant on the road, what was his apparent condition?

A He appeared to me to be frazzled, but otherwise, okay.

Q Did he appear to be injured?

A No. I man no obvious signs of injury.

Q Was he able to walk across the road to where you staged him?

A He was because now he was in custody, I was holding on to him, but he certainly didn't need my assistance in walking.

Q Was he able to respond to your instructions?

A Yes, sir.

Q And so you took him to a grassy area?
A I did.
Q What did you do there?
A At that point I put him on the ground, laid him down, and proceeded to frisk him.
Q And what, if anything, did you find?
A As far as I remember, I found some, like, notes, called pocket litter. Some miscellaneous items that were in his pocket, some change. I believe I found some keys.
Q And what, if anything, did you do after you searched the defendant?
A At that point I think I handed the items over to another agent or detective. I don't remember who was there. I went back to my car for a few minutes leaving the defendant with this other agent or detective.
Q And did there come time when you came back to the grassy area where the defendant was?
A Yes, sir, I did.
Q And approximately how long had you been gone for?
A Maybe a minute. Maybe not even.
Q And when you got back to the grassy area -- first of all, how was the defendant's posture?
A I think at this point I sat him up. I think he was still in the ground but I sat him up so he could at least sit up.
Q And at this point did you say anything to the defendant?

A I did.
Q What did you say?
A I asked him -- I don't remember exactly what I said, but I asked him how he was feeling, if he was okay. I knew that an ambulance was coming but I wanted to know if he was -- how serious his injuries were.
Q Did you ask him anything about that?
A I did. I asked him, you know, how are you, are you okay. You know, again, I knew an ambulance was coming. Just trying to gauge his injury.
Q And without saying exactly what the defendant said in response, did he say anything to you in response?
A He did.
Q And can you describe what his demeanor was at that time?
A He was calm. Calm demeanor.
Q Did he respond how he was feeling in terms of whether he needed an ambulance?
A No, sir, he did not.
Q And how generally did he respond?
A He engaged me in a religious conversation. Nothing to do with the --

MR. DINNERSTEIN: Objection.

THE COURT: Come up to side-bar.

(Continued on next page)

MR. DINNERSTEIN: I just want to know if this is the conversation at this point -- this is all that you are going to elicit from this witness, or are you going to into the specifics of the conversation because I thought that --

THE COURT: I precluded the specific conversation about whether he is a Jew and people's individual religions and that applies to all statements made by the defendant.

MR. BITKOWER: That is correct. Before I called the witness I actually discussed with the defense counsel the precise questions.

MR. DINNERSTEIN: Just wanted to know.

(End of side-bar)

(Continued on next page).

THE COURT: Go ahead.

BY MR. BITKOWER:

Q And again, how did you did the defendant respond to your question?

A He didn't answer the specific question. He again engaged me in a religious conversation.

Q And at the time he engaged you in a religious conversation did he appear hostile or angry?

A No, sir, he did not.

Q Did he appear scared?

A No.

Q Did he appear panicked?

A No, sir.

Q Did you engage the defendant in return in a religious conversation?

A No, sir, I did not.

Q Did the defendant ever answer your question about his physical condition?

A Not really, sir.

Later on at some point -- it wasn't immediately thereafter, it was probably a few minutes after that, he did mention something about his shoulder hurting, but it was not in response to my question.

Q Did an ambulance arrive at some point?

A It did.

Q What happened once the ambulance arrived?

A Once the ambulance arrived we kind of stepped back and let them do what they needed to do, but then shortly thereafter, we ended up handcuffing to a gurney and he was taken to a hospital.

MR. BITKOWER: Your Honor, if i can just show just the witness what has been marked Government Exhibit 49.

Q Sir, do you recognize what's depicted on this exhibit?

A I do.

Q And what is depicted there?

A This is the area where the accident occurred.

Q On what road?

A This is, again, the Whitestone Expressway looking northbound.

MR. BITKOWER: I offer Government Exhibit 49.

MR. DINNERSTEIN: No objection.

THE COURT: Received.

(Government Exhibit 49 received and marked in evidence)

Q And so, Special Agent, is the road here the Whitestone Expressway?

A Correct.

Q What is off to the left here?

A The left, that is where the Whitestone Expressway continues.

Q Off to the right?
A Off to the right is where, I believe, splits into, I think, it is Cross Island Expressway.
MR. BITKOWER: I am going to put 49.2 for a second.
Q Again, can you tell us where this is on 49. 2?
A Right. It appears actually where those yellow dots are, approximately, where that image is.
MR. BITKOWER: And Your Honor, if I could leave the map up while I show the witness what' been marked for identification as 49.3.
Q Do you recognize this?
A Yes.
Q What is this?
A This is the same image you just had up, again, the Whitestone Expressway with the northbound view.
MR. BITKOWER: Your Honor, if I could offer 49.3 and publish on the easel?
THE COURT: Sure, is the enlargement of the previous one?
THE WITNESS: Yes, it is.
MR. DINNERSTEIN: May I move over?
THE COURT: Sure, you can.
MR. DINNERSTEIN: I assume he is going to make reference to it.
MR. BITKOWER: Again, if the Court would indulge me,

if I ask the witness to step down and --

THE COURT: Yes. Just make sure you keep your voice up.

THE WITNESS: Yes, sir.

THE COURT: Especially if you have your back to the court reporter.

Q Special Agent, can you indicate when you first arrived at the scene of the accident what it is you saw and where you saw it on this image?

A I saw, again, the accident involving at least two cars. Probably -- it must not have been much further south than this area here, I don't remember exactly how much further south it is, I remember the defendant's car was somewhere within these white lines. Myself, my car, would have been in this left lane, just a little bit further south than that when I got to the scene .

Q Thank you.

When you say, "these white lines", are you referring to the white lines in the middle of the picture?

A Yes.

Q And when you said where your car was, are you referring to the left lane over here where this dark bluish station wagon is?

A Yes. When I showed up, arrived at the scene, Agent Rose, the defendant and another individual were off to the side.

Again, they weren't on the median but they are off to -- they were not in traffic, I guess, but I don't remember how far south they were. Probably right where that SUV is.

Q And when you actually got out of your car can you describe where went and what you did with the defendant?

A I took the defendant up to this area here. Looks like it's a kind of a grass road. I remember it being more of a dirt patch at the time but it was this kind of area.

Q You are referring to the area just immediately south of the Exhibit 16 sign?

A I am.

Q And can you indicate where on this photograph the defendant engaged you in this religious discussion?

A Same area right here. Once I moved him there, that is where he was until the ambulance took him away.

Q Thank you. You can return to your seat?

A (Witness complied)

MR. BITKOWER: Your Honor, if I can ask the witness -- if I can show the witnesses a few exhibits.

Q Showing you exhibits is 43, 44, 42, 45, and 46. Do you recognize these five exhibits?

A Yes, sir, I do.

Q What is depicted in these five exhibits?

A The defendant's vehicle after the crash.

Q Was that before the crash or after?

A After the crash.
Q And do these exhibits fairly and accurately depict what the vehicle looked like to you when you arrived at the crash scene?
A Yes.
Q Is the vehicle in the exhibits actually at the crash scene?
A Not in these images, no.
MR. BITKOWER: Your Honor, at this time I want to offer 42 through 46.
MR. DINNERSTEIN: No objection.
THE COURT: Received.
(Government Exhibits 42 through 46 received and marked into evidence)
Q I will begin with Government Exhibit 45.
Agent Spivack, you testified that this was not taken at the crash scene, do you recognize where it was taken?
A Yes, I believe that it was taken at the precinct. I believe it's the 109 Precinct in Queens.
Q And when was it taken?
A That evening of the incident. I think January 7th.
Q Showing you Exhibit 44, was that taken at the same location?
A Appears to be, yes, sir.
Q And I'm showing Exhibit 43, what about that photograph?

A Same. Same location.
Q Then showing, finally, Government Exhibit 46, what is depicted in this picture?
A Same vehicle. I'm not sure of the location.
Q And finally, Agent Spivack, you testified earlier that Whitestone Expressway is an interstate; is that correct?
A Correct.
Q What interstate number is it?
A 678.
Q Did the actual car crash and the government's response to the car crash have any affect on the traffic on that interstate highway?
A It did.
Q What affect did it have?
A Two. First, we significantly slowed traffic down. Myself and at least a couple of other vehicles were in -- stopping at least one or two lanes of traffic, and then at some point we ended up having the New York Police Department Bomb Squad show up just as a measure of precaution, but when they came we actually shut down the entire expressway, preventing all northbound traffic from moving.
MR. BITKOWER: Thank you.
No further questions.
THE COURT: Thank you, Mr. Bitkower.
Mr. Dinnerstein.

CROSS-EXAMINATION
BY MR. DINNERSTEIN:
Q Good afternoon, Agent.
A Good afternoon.
Q You said, sir, on direct examination you presently have been employed with the Federal Bureau of Investigation for about three and half year?
A That's correct.
I have been a special agent for, approximately, three and a half years. I have been employed for a little over six.
Q And what was your employment prior to becoming a special agent?
A I was intelligence analyst with the FBI prior to special agent.
Q Now, in January of 2010 you had been a special agent for about a year and a half; is that correct?
A Approximately. Sounds about right.
Q And at that time were you a member of what is known as the Joint Terrorism Task Force?
A I was, sir.
Q And that was a joint force with the New York Police Department and FBI agent; is that correct?
A Correct.
Q And how long had you been a member of the Joint Terrorism

Task Force?
A I think probably late November. So maybe a month and a half, approximately.
Q Now, you also mentioned on direct examination that you were conducting surveillance; is that correct?
A Yes, sir, that is correct.
Q And on this particular date you were conducting surveillance at 29-49 137th; is that right?
A That's right.
Q And how long have you been conducting surveillance at that location?
A It was definitely not our first time. We had probably maybe a half dozen times, maybe a little bit more, at that particular location.
Q Do you know whether or not other agents also conducted surveillance at that particular location?
A Yes, sir, I do.
Q And do you know how long the surveillance had been going on at that particular location?
A I don't. I know it had been going for a fairly lengthy time, but I don't know exactly how long.
Q I'm sorry. When you say fairly lengthy, could you approximate how long it was?
A Probably at least a few weeks.
Q And it may have actually been longer?

A Certainly. Certainly.
Q Now, you said, sir, that you had been at that location five or six times; is that correct?
A As I recall, yes, sir.
Q Did anything happen -- and you would work an eight or 12 hour shift when you were at that location at that time?
A Typically eight hour shifts.
Q And there would be four or five other FBI agents and New York Police Department Officers who would also be present during those shifts?
A That's correct.
Q And I won't ask you to go into the details, we have talked about this a little bit, but one person is an eye, and the other people kind of go into a staging; is that correct?
A Typically, and in a setting like this, yes.
Q Now, the five or six times you had seen or been present at that location 29-49 137th Street, did you notice whether or not -- and Mr. Medunjanin was the subject; is that correct?
A That's correct.
Q Did he ever go out during these five or six occasions?
A Yes, sir. Couple of times we observed him leaving the residence.
Q And did you follow him when he went out?
A Yes, sir, we did.
Q And where did he go, those other occasions?

A Most of the time it was to work. I believe I only saw him leave the residence two or three other times. Two of the times was to work and maybe one other time was headed to a doctor or a lawyer's visit. I can't recall.
Q And this would be -- these visits occurred in what, December of 2009 or January of 2010?
A Probably December, maybe the first week of January.
Q And you would take notes as to each of those times that he went out of the location?
A As a surveillance team, we would.
Q As a surveillance team?
A Yes, sir.
Q And did you learn where he worked?
A Yes, sir.
Q And where did he work?
A I know he was a doorman for an apartment building in the Flat Iron district in Manhattan. I don't know the exact address off the top of my head.
Q So in terms of moving the investigation forward, you weren't there to observe him go to work, right?
A I mean, yes, I suppose.
Q But you were there to conduct an investigation with the police department regarding a terrorist; is that correct?
A No, sir. My role was purely a surveillance role. It was just to observe where he went and what he did.

Q Did you know who the case agent was in this case?
A I did.
Q And who was that?
A I believe it was Special Agent Farbod Azad.
Q Did he provide you with any directions as to what he was hoping to get from this surveillance?
A Not to me personally.
Q And he may have spoken to other people in the surveillance team; is that correct?
A Possibly.
Q Or your supervisor?
A Possibly, yes.
Q Now, did you ever see him go to a mosque?
A No, sir. I don't recall.
Q Now, were you also present as a part of a search team in September of 2009?
A Regarding this particular case, no, sir. I was not. I don't believe so.
Q Were you present in any way in terms of the investigation of Najibullah Zazi, you're shaking your head yes?
A Yes, sir, I was.
Q How were you present with Najibullah Zazi?
A That particular matter I was a part of our mobile command unit, team of agents, we were actually out in Queens overseeing the take-down of several individuals that led to

this case.

Q And what date was?

A I don't recall the date off the top of my head.

Q And how about Ahmedzay, were you also present when things happened regarding his particular case?

A If it was part of that same take-down, then I was. If not, then I -- probably not.

(Continued on next page)

BY MR. DINNERSTEIN: (Continued)
Q Could you tell the Ladies and Gentlemen of the Jury what a take-down is?
A Yes, sir. General term for an arrest, typically.
Q Now, let's talk about January 7th of 2010, okay.
Did you know that a warrant was going to be executed on that particular day?
A I did.
Q And were you the "I" when the warrant was being executed?
A Yes, sir, I was.
Q And did you make a notation of the warrant being executed?
A I did not, no.
Q Do you know whether anybody made that notation?
A Yes, sir. I mean, I know it was called out over the radio. I don't know if somebody wrote it down or not. I would not have necessarily written it down because I was not on what we call log duty, so I would have relayed it over the radio for someone else to take note of it.
Q Okay. And you said, sir, that you filled out a log -- or not that you personally filled out a log, but someone filled out a log; is that correct?
A That's correct.
MR. DINNERSTEIN: And this is AF-1, I'm going to just show the witness.

THE COURT: Hold on.

(The above-referred to Exhibit was published to the witness.)

Q Are you able to see that?

A I am, sir.

Q Now, there's -- is that the log that we're talking about that was filled out on that particular day?

A That's correct.

Q Now, this log was not filled out by you; is that correct?

A That's correct.

Q But you said that when you saw the agents entering the building and you knew that they were executing a search warrant, you, sir, noted that and put it over the radio that that, in fact, is happening; is that correct?

A I did, yes, sir.

Q Is there any indication on the log that that was observed?

A No, sir.

Q Do you know why?

A No, sir.

Q Okay. Would that typically, the fact that a search warrant is being executed, be something that one would generally put down on a surveillance log?

A Possible, sir. I mean, I could see why it wouldn't be. But I would, in my log, I might put it in.

Q Why would it not be?
A You can view the log as the actions of the subject, in which case, you know, executing search warrant, we did not see the subject do anything so, in essence, the log is really what the subject did, when the subject did it and that sort of a thing.
Q But you could also do it as to a significant event; right?
A You certainly could, yes, sir.
Q And certainly, an execution of a search warrant would be considered a significant event?
A Yes, sir.
Q So, some other agent may have put it down; right?
A Possibly, sir.
Q What was the reason why you told the other officers that the search warrant was being executed?
A More just as a heads-up, as an FYI.
Q I see. Now, did you know whether or not there were telephone calls that were being intercepted from Mr. Medunjanin's phone?
A I'm sorry, at the time of surveillance, sir, or just in general?
Q At the time that you were conducting surveillance?
A I don't know if I knew it at the time. I may have learned it afterwards. I don't know when I learned that

information.

Q Now, you, of course, never spoke to Mr. Medunjanin, other than on January 7th; is that correct?

A That's correct.

Q And you never spoke to Mr. Medunjanin's parents; is that correct?

A Never.

Q And you never spoke to his sister; is that correct?

A That's correct.

Q Now. Did you know whether or not Mr. Medunjanin had a lawyer?

A I believe I did, yes, sir.

Q And did you know whether he had a lawyer on January 7th?

A It's my understanding that he did, yes, sir.

Q And who told you that?

A I don't recall who exactly. I mean, it would have been information that was passed down through my team.

Q Now, you said, sir, that around -- what time was the search warrant executed that you observed?

A Estimating, probably 1:30 or so. It was shortly after we initiated surveillance.

Q And when you say "we," actually at that particular moment, you were the person who was the --

A I apologize. When I say "we," I mean my team. We took over the surveillance from another team.

Q There had been another team prior to 1:10, thereabouts?
A Correct. Correct.
Q Now, you said that you received information from Agent Roese at some point that Mr. Medunjanin was driving the vehicle; is that right?
A Yes, sir. Well, the information I received was that he was leaving the apartment, heading towards the vehicle.
Q Okay. And at that point, that was also a heads-up; is that correct?
A Correct.
Q And at that point, did you continue to receive radio communication with Agent Roese?
A Yes, sir.
Q And he made several radio communications; is that correct?
A Yes, sir.
Q And as a result of those radio communications, you moved your vehicle; is that correct?
A That's correct.
Q And this is, I think it's...

(Pause in the proceedings.)

MR. DINNERSTEIN: This is Government's Exhibit 49-2, which is in evidence.

(The above-referred to Exhibit was published to the jury.)

Q Now, you mentioned, sir, that there was a Toys "R" Us; is that correct?
A Yes, sir.
Q And can you see where the Toys "R" Us is in this particular location?
A Not on the view here, sir. If you move it up a little bit.
(Complies.)
A Yes, sir. Linden Place, down here (indicating). That's where the Toys "R" Us would have been in, on that side.
Q On that screen, you can make a yellow mark, I hope?
A Yes.
(Complies.)
A That group of dots over there, that's an approximate location of the Toys "R" Us.
Q Whitestone Bridge at that point goes over a highway, over the highway; is that correct?
THE COURT: You mean the Whitestone Expressway?
Q The Whitestone Expressway?
A Yes, sir -- I'm sorry?
Q I'll repeat the question.
The Whitestone Expressway is on overpass; is that correct?
A Meaning, is it raised?
Q Yeah, is it raised?

A Hmm... probably at some points -- yeah. I mean, it had to have been at some points because I know Linden Place goes underneath it.
Q So, you can get on the highway northbound or southbound?
A I don't think there. Linden Place goes underneath the Whitestone and you have to take an access road to actually get on the Whitestone.
Q Now, and these numbers over here on the map, like 14 and 15, those are exits; is that correct?
A Yes, sir, I believe so.
Q And are they both -- and are there also, there's exits and there's entrances; is that correct?
A Correct.
Q And if -- there's both entrances and exits going both northbound and southbound; is that correct?
A I assume so, sir. I mean, because I don't know if each exit has both, but I assume so.
Q And the way one would get to, let's say if one wanted to travel southbound on the Whitestone Expressway, one would have to go underneath the highway and then go south and then be on the access road and then eventually get on the highway; is that correct?
A I guess, depending on what exit you're at. I don't know what exits go underneath, what go over. I know at Linden, you have to go underneath the Whitestone.

Q So, at some point you say, sir, you saw Mr. Medunjanin's vehicle; is that right, sir?
A Yes, sir.
Q And he was driving in a northbound direction and you were going in a southbound direction; is that correct?
A That is correct.
Q And that would be on 137th Street at that time?
A Yes, sir.
Q And now, did you notice the rate of speed?
A No, sir, I did not.
Q Now, at some point, you say you saw the vehicle.
Did you also see, by the way, Agent Roese's vehicle?
A I knew that Agent Roese was following. I don't remember if I actually saw Agent Roese or not.
Q And then at some point, though, you turned your vehicle around; is that correct?
A That is correct.
Q And when you turned your vehicle around, you lost sight of Mr. Medunjanin's vehicle; is that correct?
A That is correct.
Q And then you drove onto the highway; is that correct?
A That's right.
Q And do you know what exit or entry you got on?
A No, sir, I made no note of it. I just, I got on the access road and as soon as I could get on the expressway, I

was on.
Q And how long did you follow the vehicle until you saw the exit?
A A couple miles.
Q Couple miles?
A I'm sorry, until -- maybe I didn't understand your question, sir.
Q Sure. How long did you follow -- not the vehicle.
When did you see the exit once you got onto the expressway?
A When did I see the exit?
Q The accident.
A Oh, accident.
Q I'm sorry.
A I'm sorry, a couple minutes. Few minutes, maybe eight minutes or so.
Q And then, at the time you saw the accident, you saw Agent Roese, you saw another individual, and you saw Mr. Medunjanin; is that correct?
A That's correct.
Q And they were standing on the left side of the highway; is that correct?
A When I got to them, yes, sir, they were.
Q And can you see this?
THE COURT: You can come down, go ahead.

THE WITNESS: Thank you, sir.

(Witness steps down.)

Q It would be over whether these trees are?

A Yes, sir, I don't know how far north or south it was, but it would have been on the left side.

Q And there's a ramp here on the left side, a railing her is that correct?

Do you see the railing on the other side?

A On the southbound side, yes, sir.

Q Okay of the railing would be -- this is a median between the north side of the highway and south side of the highway; is that correct.

A That's correct.

Q And how high is this median?

A Not very high. A couple feet.

Q And if one goes over the median, they would be going on the south side of the Whitestone Expressway; is that correct?

A That's correct.

MR. DINNERSTEIN: Okay, you can go back.

THE WITNESS: Okay.

(Witness resumes stand.)

Q Now, sir, at some point, you saw Agent Roese putting handcuffs on Mr. Medunjanin; is that correct?

A That's correct.

Q And he was being handcuffed from the back --

A Yes, sir.
Q -- is that correct?
Now, what was he being arrested for at that time?
A I had no idea.
Q Did you ask Agent Roese what he was being arrested for?
A Not at the moment, sir, no.
Q Is it typical that when there's an accident, somebody gets arrested?
A Not -- I mean, it depends on the situation, I suppose.
Q Would it typically, if somebody was going to be arrested, would it be a Federal crime?
A No, not necessarily, sir, no.
Q Would an accident ever be a Federal crime?
A I guess not that I can think of.
Q But Agent Roese handcuffed him; is that correct?
A Yes, sir.
Q And then Agent Roese -- and you then approached Agent Roese; is that correct?
A Yes, sir.
Q And you decided that you needed to search Mr. Medunjanin; is that correct?
A That's correct.
Q And that's because Agent Roese had just placed him under arrest?
A That's because anybody in custody, we do a protective

sweep-over, to make sure there's nothing on him to cause us harm or to himself.
Q Even though, at that moment, you had no idea what he was being arrested for; is that correct, sir?
A That's correct.
Q Now, you then moved -- you can come down over here again.
(Witness steps down.)
Q You moved Mr. Medunjanin from this side of the highway across the highway to this; is that correct?
A That's correct.
Q And that would be the area around where the exit 16 sign is?
A Just in front of it.
MR. DINNERSTEIN: Okay, thank you, sir.
(Witness resumes stand.)
Q And you, then, placed Mr. Medunjanin on the ground; is that correct?
A I did.
Q And that would be face-down; is that right?
A Initially, yes, sir.
Q Now, and you would search him to see whether or not he had any sort of weapons or anything like that; is that correct?
A Correct. Correct.
Q Now, do you recall what you took from him?

A Now, not off the top of my head. Some pocket litter, notes, things of that sort. Some keys maybe. I think there was maybe a pocket sized Koran, perhaps.
Q You said pocket litter?
A I'm sorry, we call it pocket litter, I apologize. It's basically notes, things that are crumpled up in his pocket.
Q Did you notice whether or not he had a search warrant in his pocket?
A He may have. Honestly, sir, without referring to what was collected, I wouldn't be able to tell you for sure.
Q And you didn't fill out any inventory as to the items that were taken from him at that time; is that correct?
A Not me personally, no.
Q Now, there came a point where an ambulance arrived; is that correct?
A That's correct.
Q And you were still with Mr. Medunjanin when the ambulance arrived; is that right?
A I don't know if I was either with him or I was in the vicinity. Somebody was with him.
Q And he would have still been in that general area around where the exit 16 sign is?
A Yes, sir.
Q And he was cooperative; is that correct?
A Yes, sir.

Q And he was polite to you --
A He was.
Q -- is that correct.
And you said, he indicated something about his shoulder hurt; is that correct?
A At some point, yes, sir, he did.
Q And he also -- but it was your determination that he wasn't badly hurt; is that correct?
A Based on the physical observation of him; correct.
Q When he said his shoulder hurt, did you ask him where his shoulder was hurting?
A May have. At that point the ambulance was, I think, just about there.
Q So, then the ambulance came and whatever medical treatment he was to receive was going to be with the ambulance crew; is that correct?
A That's correct.
Q You're, of course, not a doctor; right?
A That's correct.
Q Now, sir, you said on direct examination that he, that you handcuffed him to a, to the back-board that the ambulance crew took out for him; is that correct?
A That's correct.
Q What was the reason that you did that for?
A He's in custody. Anybody in custody, especially when

we're passing them off to non-law enforcement, certainly we're going to handcuff them to the gurney.
Q Did you go in the ambulance with him?
A I did not.
Q Do you know whether or not any other officer went with him in the ambulance?
A It's my belief that somebody did, but I don't know who.
Q Now, other than the notes that I showed you before, did you take any other notes regarding this case?
A No, sir.
MR. DINNERSTEIN: Thank you very much, sir. I have nothing further.
THE COURT: Thank you, Mr. Dinnerstein.
Any redirect, Mr. Bitkower?
MR. BITKOWER: Very briefly, Your Honor.
REDIRECT EXAMINATION
BY MR. BITKOWER:
Q Government's Exhibit 3500-AS-1, what is that?
A This is our surveillance log.
Q For January 7th of 2010?
A That's correct.
MR. BITKOWER: Unless there's an objection from defense counsel, I'll offer that as an Exhibit.
MR. DINNERSTEIN: No objection.
THE COURT: Received.

(Government's Exhibit 3500-AS-1 was received in evidence.)

MR. BITKOWER: No further questions.

THE COURT: All right, you are excused.

THE WITNESS: Thank you.

THE COURT: Have a good day.

(Witness excused.)

THE COURT: Call your next witness.

MR. LOONAM: The Government calls Special Agent Farbod Azad.

(Witness takes stand.)

THE COURTROOM CLERK: Please, raise your right hand.

S. A. F A R B O D A Z A D,

called by the Government, having been first duly sworn, was examined and testified as follows:

THE COURTROOM CLERK: Take a seat and state and spell your name for the record.

THE WITNESS: First name is Farbod -- F-A-R-B-O-D, last name Azad -- A-

Q -A-D?

MR. LOONAM: May I enquire, Your Honor?

THE COURT: Yes.

MR. LOONAM: Thank you.

DIRECT EXAMINATION

BY MR. LOONAM:

Q Special Agent, what do you do for a living?

A I'm an FBI special agent.

Q All right. How long have you been employed by the FBI?

A About four years.

Q All right. Are you assigned to a particular FBI task force?

A Yes, the New York JTTF.

Q All right. And what does the JTTF stand for?

A The Joint Terrorism Task Force.

Q And are you assigned to a particular squad on the New York JTTF?

A Yes, CT-4.

Q And what does CT stand for?

A Counter-terrorism.

Q And does CT-4 have an assigned area of responsibility?

A Our responsibility is threats to the homeland emanating from Pakistan or Afghanistan.

Q Now, in connection with your duties as a special agent assigned to CT-4, did a time come when you worked on an investigation involving the defendant, Adis Medunjanin?

A Yes.

Q What was your assigned role in that investigation?

A I was assigned as the case agent.

Q Did you have a co-case agent assigned to work that case with you?
A Yes.
Q Who was that?
A Detective Maysonet.
Q Directing your attention to September 14th, 2009.
Was there a development of the investigation of the defendant on that day?
A Yes.
Q Can you please tell the Court about that development.
A There was a development where he were going to execute a search warrant and interview the defendant.
Q And where was that search warrant executed?
A Apartment 6-A at 29-49 137th Street in Flushing.
Q And what was the search warrant for?
A A number of things, but mainly for explosives or bomb-making materials or anything that could be used to store data, notes, media, things like that.
Q And what time was the warrant executed?
A About 2:30 a.m.
Q Okay. And were you part of the team that first entered the defendant's apartment to execute the search warrant?
A I was not.
Q All right. Who made the first entry into the defendant's apartment?

A A team of SWAT members.
Q After the SWAT team entered the defendant's residence, were you aware of whether the defendant was handcuffed?
A Yes. Yes, he was.
Q And were members of the defendant's family handcuffed?
A Yes, they were.
Q All right. And why were they handcuffed?
A It's normal protocol for the SWAT team after they make entry to make sure they have positive control over all the occupants to make sure that the scene is safe.
Q All right. And do you know how long they were handcuffed for?
A I don't.
Q What was your role during the execution of the search warrant at defendant's residence on September 14th?
A I was there to interview the defendant.
Q All right. And did you interview the defendant?
A Yes.
Q And did you do so by yourself or with anyone else?
A With Detective Maysonet.
Q All right. And how did it come about that you interviewed the defendant on September 14th?
A We entered the apartment, identified the defendant by a photo that we had, asked that he be unhandcuffed, we introduced ourselves and asked if he was willing to speak to

us. We had some questions and some things we wanted to clear up.
Q And what was the defendant's reaction when you asked if he was willing to speak with you?
A He agreed. He said yes.
Q All right. And what was the defendant's affect or his demeanor at the time when you approached him?
A He was a little shaken.
Q And where did the interview take place?
A Outside the residence. It's on a street corner a couple blocks away.
Q You say a couple blocks away. Why did you not interview the defendant in his apartment?
A There was an active search taking place, there would have been a lot of commotion, people coming in and out searching for things, looking through things. We just didn't want the distractions there.
Q All right. And how did you get to the location where you conducted the interview?
A We drove him.
Q All right. And was the defendant handcuffed at any point during the interview or during the transport to the location where you conducted the interview?
A No, he was not.
Q When was the defendant unhandcuffed?

A Inside the residence when we first approached him.
Q All right. And who unhandcuffed him?
A I can't -- I think one of the SWAT members. We asked that he was -- he be unhandcuffed.
Q Now, did you or Detective Maysonet say anything to the defendant at the outset of the interview?
A Yes. We introduced ourselves, told him that we had a terrorism investigation that we were looking for some answers to. We explained that this was completely voluntary, we thanked him for being willing to come with us and conduct the interview with us and we started the interview.
Q All right. And how could the defendant have returned to his apartment had he chosen to end the interview?
A He could have just walked home.
Q Now, how long would you estimate that you spoke with the defendant on September 14th?
A It's about two to three hours.
Q Okay. And how were you positioned, physically, during the course of this interview?
A We were outside the car standing around, all of us, either on the sidewalk, on the curb, on the grassy area, sometimes leaning on the car. We'd moved about, changed positions throughout the interview.
Q All right. And can you describe defendant's demeanor during the course of the interview?

A Yes. He was calm once we were there. He was willing to answer our questions. We had back-and-forth conversation.
Q All right. And what was the tone of the overall interview?
A It was friendly.
Q Now, what general topics were discussed during the course of the interview?
A We discussed the defendant's background, his education, some of his associates, and his overseas travel.
Q Now, you testified that the defendant discussed his background with you.
What did the defendant testify and -- what did the defendant tell you about his background?
A Defendant said that he was born in Bosnia, he had moved to the United States when he was younger with his family, about 1994, had lived here since, and he had become a U.S. citizen about 2002.
Q And did the defendant discuss his level of education?
A Yes, he did.
Q What did he tell you about that?
A He said he had graduated high school and graduated from college as well.
Q All right. And did he tell you where he went to college and what he studied, what his degree was in?
A Yes, he said he went to Queensborough College or Queens

College and he had a degree in economics.
Q During the course of the interview, did the defendant discuss his employment with you?
A Yes, he did.
Q What did he tell you about his employment?
A He said that he was employed as a security guard for a building and he was working two days a week.
Q Did the defendant indicate how much income he earned during, you know, while working two days a week?
A Yes, he said that he earned about $220 after taxes.
Q Okay. All right, during the course of your interview with the defendant, did the topic of religion come up?
A Yes, it did.
Q Did the topic -- and who raised that topic?
A The defendant.
Q All right. And did that topic come up once or more than once during the course of the interview?
A More than once.
Q And did the defendant seem comfortable and confident in discussing religious topics with you?
MR. DINNERSTEIN: Objection.
THE COURT: Overruled.
A Yes. He was very comfortable and confident in his knowledge.
Q Now, you testified that the defendant discussed some

travel?
A Yes.
Q Did the -- what travel did the defendant discuss with you?
A The defendant said he had traveled back to Bosnia with his family a couple times, he had been to Saudi Arabia, and had traveled to Pakistan.
Q Let's focus on the travel to Pakistan.
What did the defendant tell you about his travel to Pakistan?
A He said he had travelled to Pakistan in August of 2008 with a couple of his friends.
Q And did he name the friends that he travelled to Pakistan with?
A Yes. He said Najibullah Zazi and Zarein Ahmedzay.
Q Did the defendant indicate how long he was in Pakistan for?
A Yes. He said, I think it was just under a month. 26 days, I think.
Q And did the defendant say -- well.
Did the defendant indicate where he stayed while in Pakistan?
A Yes, he said he had stayed at a relative, an uncle of Najibullah's house -- a relative's house, Najibullah's uncle in Peshawar, Pakistan.

Q And did the defendant make statements to you about why he travelled to Pakistan?
A Yes. He said he had gone to Pakistan in order to get married to Najibullah's cousin.
Q And did the defendant make any statements to you about whether or not he was married while he was in Pakistan?
A Yes. He said the marriage did not work out. He was not married while there.
Q And did he explain to you why the marriage did not work out?
A Yes. He said that he, there was a dowry associated with the marriage and he they found out about a week or ten days before returning that he could not afford the dowry, he had not brought enough money; therefore, he was not married.
Q What is a dowry?
A Money or gifts to the family of the bride.
Q No, did you the defendant make statements about what he did while in Pakistan?
A Yes. He said that they stayed in Peshawar the entire time and that they visited various mosques and restaurants.
Q Did the defendant tell you whether or not he had traveled to Waziristan during his travel to Pakistan?
A The defendant said they had not traveled to Waziristan.
Q Did the defendant make any statements about whether Najibullah Zazi returned to the United States from Pakistan?

A Yes. He said that Najibullah Zazi returned at a later time, after the defendant had returned from Pakistan.
Q And did the defendant indicate or tell you his understanding of what Najibullah Zazi did upon returning to the United States from Pakistan?
A Yes. Najibullah moved to Colorado shortly after returning from Pakistan. He went to live with an uncle of his in Colorado.
Q You testified earlier that the defendant discussed some of his associates.
Was one of the associates he discussed Zarein Ahmedzay?
A Yes.
Q All right. What information, if any, did the defendant give you about his relationship with Zarein Ahmedzay?
A He said he had known Zarein Ahmedzay since the ninth grade in high school, they were close friends.
Q Now, did the defendant describe Zarein Ahmedzay as a former friend or a current friend?
A Current friend.
Q And did he describe any ongoing activities he participated in with Zarein Ahmedzay?
A He described playing basketball with Zarein Ahmedzay.
Q All right. In discussing his time in Pakistan, did the defendant tell you that he had a falling-out with Zarein

Ahmedzay that affected his -- their friendship?

A No.

MR. DINNERSTEIN: Your Honor, I would just object to the leading questions.

THE COURT: Sustained.

Let's take our lunch break. We'll resume at 2:00 o'clock.

Don't discuss the case. All rise.

(Jury exits at 12:59 p.m.)

(In open court.)

(The following occurs outside the presence of the jury.)

THE COURT: He's got a point.

MR. LOONAM: Understood.

THE COURT: You've got to invite his attention to a particular area and then ask him to tell the jury what the defendant said, because you're leading too much.

MR. LOONAM: Yes, sir.

THE COURT: See you at 2:00.

(Continued on following page with AFTERNOON SESSION.)

A F T E R N O O N   S E S S I O N

(In open court; jury not present.)

MR. LOONAM: Your Honor, there's an issue with the defendant's post-arrest statement. It was not raised by the defense motion in limine. I think it prudent to preview it for your Honor before we elicit it.

The defense, through questioning, has suggested that the defendant may have been pressured or intimidated by his trainers to just go along with whatever the plan was while he was in Waziristan in the Al Qaeda compound. However, during his post-arrest statement, the defendant described his relationship with one of his trainers, Yousef, and it's very informal and very friendly, and during the course of describing his relationship, the defendant told the agent that he had made various racially-charged jokes to Yousef, and was specific with respect to the racially-charged yokes he made with Yousef, because he was so comfortable. It's probative, because it shows the defendant was comfortable with these guys in a very informal way. Obviously, because of the nature of the subject matter, I want to preview it for your Honor, so we can discuss it before it's elicited.

THE COURT: All right. Is there an objection to eliciting it?

MR. DINNERSTEIN: Yes, your Honor.

I think balancing the 403 and 404 issues, they have other stuff that they could introduce, and this, in terms of a balancing test, I submit, your Honor, is unnecessary for them to say something or elicit something that might be insightful.

THE COURT: It's really hard for me to have a good feel for this until I get all of the testimony. So, I don't want you to elicit it. At the end of your direct of the relevant witness, you can ask for a sidebar. I may well wait and hear what the tenor of the cross-examination is, as well.

MR. LOONAM: Okay, your Honor.

Can the agent at least generally describe when his relationship with Yousef was comfortable and relaxed, without getting into the specifics at this point? Depending on the cross-examination and the entire testimony, we may be able to raise this issue. Is that fair?

THE COURT: The answer is, yes, to the extent -- and there was an objection in this regard before the lunch break, to whether the defendant was comfortable. You may recall that objection.

In my view, that's kind of paradigm lay-opinion testimony. They are observing him. I think the question was whether he was comfortable in discussing his religious views, and that's based, I think, fairly under 701, based on things that the testifying agent observed. So, I overruled that objection. I think that's fair ground here.

But stay away for now -- obviously, the capacity for unfair prejudice when it comes to racially-charged jokes is great, which is why you admirably raised it yourself before the jury heard it. I don't want you to go there. As I say, at the end of direct. If you want me to reconsider this, feel free to come to sidebar. Be prepared for me, not to elicit it on direct, and I'll see whether it's fair rebuttal after cross-examination.

(Jury present.)

FARBOD AZAD, resumed

THE COURT: Please be seated. We're ready to resume.

MR. LOONAM: May I continue, your Honor?

THE COURT: Yes, go ahead, Mr. Loonam.

DIRECT EXAMINATION (Continued)

BY MR. LOONAM:

Q Good afternoon, Agent Azad.

A Good afternoon.

Q Now, during your discussions with the defendant on September 14, did the defendant discuss his opinion of Najibullah Zazi?

A Yes, he did.

Q What did he tell you about?

A He said Najibullah Zazi is a 100 percent good guy.

Q Were those his words?

A Those were his words.
Q Did he describe the nature of his relationship with Najibullah Zazi?
A Yes. He said they had met at the Masjid Abubakr, and they had been extremely close ever since.
Q Did you ask the defendant about the last time he saw Najibullah Zazi?
A Yes.
Q What he did he tell you about?
A He said that he had last seen him on that Thursday, the Thursday before the interview, which would have been September 10 at Abubakr for the evening prayer.
Q Now, during your discussions with the defendant, did you ask him how frequently he communicated with Najibullah Zazi?
A Yes, we did.
Q What did he tell you about that?
A He initially said that he was in touch with Najibullah Zazi about once a month. When we pressed him and told him we could get the phone, he said, Okay, it's more like ten to fifteen times a month, to include these messages and phone calls.
Q And did that discussion -- strike that.
And so, when you discussed the last time the defendant had seen Najibullah Zazi, did you ask him any questions as to whether he had been expecting to see

Najibullah Zazi in New York?
A Yes. He said that Najibullah had texted him about a week before he came to New York, letting him know that he was coming to town.
Q Showing you what's in evidence as Government's Exhibit 206. Do you recognize Government's Exhibit 206?
A Yes, I do.
Q What do you recognize it to be?
A That is the defendant's cell phone.
Q How do you recognize it?
A We seize it on the 14th, seized it again in January of 2010.
Q Why was it seized twice?
A It was seized originally during the first search that we discussed already, on the 14th. Then we had given it back to him, and then we had consent to search it the second time in January.
MR. LOONAM: May I approach, your Honor?
THE COURT: Yes.
Q I'm going to ask you to pop off the back of Government's Exhibit 206 and pull out the battery, and see if you could read the "IMEI" number that appears on that phone?
A Yes.
Q Would you please read the IMEI number?
A It's IMEI 358265012463912.

Q Okay. I'm now going to publish what's in evidence as Government's Exhibit 207-A. What is Government's Exhibit 207-A?
A That is the data report for the cell phone.
Q I hate to do it to you. I'll ask it this way: Does the IMEI number that appears on this record match the IMEI number for that phone?
A Yes, it does. Thank you.
Q What was the defendant's phone number for that phone?
A The phone number was 718-216-6644.
Q Now, have you had an opportunity to review toll records in your capacity as case agent, to see whether there were any texts consistent with the defendant's statement that he had been notified by Najibullah Zazi on this trip?
A Yes. I have reviewed the text messages that were on this phone at the time we seized it.
Q Did you review any of the toll records to look for that text?
A Yes, I have.
Q Did you find any toll records consistent with that text being sent?
A The toll records, yes.
Q And when was that text sent, according to the toll records?
A September 4, 2009.

Q And I'm showing you what's in evidence as Government's Exhibit 181. Does that text appear on Government's Exhibit 181?
A Yes, it does.
Q Which one is it?
A September 4 at 11:53 from this 300-500-2877 number to 718-216-6644.
Q Now, flipping through the Government Exhibits, are there records of the text messages that were on the defendant's phone as of September 19 in this record?
A Yes.
Q And are there text messages that predate September 4?
A Yes.
Q And are there text messages that postdate September 4?
A Yes.
Q But are the September 4 text messages, were they contained on the defendant's phone?
A No, they were not.
Q In evidence as Government's Exhibit 37, your Honor?
Do you recognize Government's Exhibit 37.
A Yes, I do.
Q Where did Government's Exhibit 37 come from?
A That was one of the photos that was stored on the defendant's phone. It's in the report that we just saw.
Q Now, what did the defendant have to say about the last

time he saw Najibullah Zazi, when you interviewed him on September 14?
A He said that he had met with him at Masjid Abubakr on that Thursday, the September 10. They had parted ways and he had not seen him since.
Q Now, during your interview with the defendant on September 14, did the topic of any potential attacks come up?
A Yes.
Q How did it come up?
A We brought it up. We wanted to know, we asked the defendant, if there were any impending attacks, plans, anything of that like that we should know about as law enforcement, because we were here for a terrorism investigation.
Q And what was the defendant's response?
A He told us that he was not aware of any attacks. He was not aware of any plans. He also -- we asked it a couple of different times, and he said, We don't want this war.
Q When the defendant said, We don't want this war, did you ask any clarifying questions?
A Yes. We thought it was odd, who was "we," what did he mean by "we"?
Q What was his response?
A His responses were and his friends that we were asking the questions about.

Q Who were you asking the questions about?
A The defendant and Adis -- Najibullah Zazi and Zarein Ahmedzay.
Q Now, did the issue of American foreign policy come up during the course of your interview?
A Yes, it did.
Q How did it come up?
A Again, we were asking about any potential attacks or plans that we should know about, and the defendant brought up by saying, America hates Muslims and America is in the position it is in because of its support for Israel.
Q Now, how did the interview of the defendant conclude?
A We ended the interview.
Q How did the defendant get back to his home?
A We drove him back.
Q Can you describe the rapport you had with the defendant at the conclusion of the interview?
A It was a rapport. It was friendly. We thanked him. We asked him if he would be open for interviewing or meeting again, so we could ask him some more questions, things that needed to be cleared up as time went on. He agreed.
Q Can you explain to the Court why it's important for you, as an FBI agent, to try and maintain good rapport with subjects of an investigation?
A To put it simply, we want to have good conversation flow.

We want the person to feel comfortable speaking to us.
Q Did a time come again when you in fact spoke with the defendant?
A Yes.
Q When was that?
A September 17, 2009.
Q How did it come about that you interviewed the defendant on September 17?
A We, Detectives Maysonet and myself went to his residence. We knocked on the door. The defendant answered. We asked if he was willing to speak to us again, and he agreed.
Q Where did that interview take place?
A The United States Attorney's Office here in Brooklyn.
Q Approximately how long did you speak to the defendant for?
A It was about eight hours.
Q Was the defendant handcuffed at any point during the interview or before the interview?
A No.
Q Was the defendant told anything at the outset of the interview?
A Yes. We again explained it was voluntary, he had agreed to speak to us. We thanked him. We were concerned about terrorism matters. We just wanted to clear up some more of the same type of questions and topics that we covered in the

last interview.
Q Did the defendant agree to speak with you?
A Yes.
Q What topics did you cover during the course of this interview?
A Generally, the same topics as the previous interview, just more in detail. We discussed the defendant's travel, his associates, any potential attacks in the United States.
Q Did the defendant discuss his relationship with Najibullah Zazi?
A Yes.
Q What did he tell you during the course of this interview?
A He clarified a little more, explained a little more. He said they had become more religious together around the same time about four years prior to this interview. They kind of met at the mosque, and their interest in religion grew together, and they both kind of grew out their beards and learned more about religion together.
Q And did the defendant discuss his religious beliefs as they pertained to the interview with you?
A Yes. He said it was not permitted for him to lie, not permissible for him to lie.
Q And did the defendant discuss his travel to Pakistan?
A Yes, he did.
Q And what did he say about his travel to Pakistan?

A Again, he told us that he had traveled to Pakistan in order to marry Najibullah Zazi's cousin.
Q And did the defendant say anything about who he traveled with?
A Yes. He said that he had traveled with Najibullah Zazi and Zarein Ahmedzay.
Q Did the defendant say anything about why Zarein Ahmedzay's travels?
A Yes. Zarein had family, he had a wife in Afghanistan, so he had traveled with them to see the marriage through, and then continue on to see his family in Afghanistan.
Q Did the defendant provide any more specifics with respect to this arranged marriage?
A Yes. He said Najibullah had told him that there was a cousin of his in Peshawar that he could marry, and the defendant traveled there in order to meet the potential bride and see the marriage through, but it did not work out, because of the dowry situation.
Q Did the defendant provide any additional information about the dowry?
A Yes. He said about a week before he was set to leave to come back to the United States, he found out the dowry was $10,000. He did not bring the $10,000. He had only brought $3,000 with him. He extended his visa for about ninety days after that, in hopes that the marriage would work out, but

ended up coming back in September anyhow.

Q Did the defendant tell you what he did with his time in Pakistan?

A Yes. He said that they stayed in Peshawar around Najibullah's uncle's house. They went to various mosques and restaurants to eat, and that was it.

Q Now, did you ask the defendant any questions about training?

A Yes, we did. We asked if he, Najibullah or Zarein had received any sort of training or military-style training while they were there.

Q What was the defendant's response?

A He said that he had not been approached for training, he had received no training, none of them. Same for all three. None of them had received any sort of training while there.

Q Did you ask any questions about whether he saw anyone possess weapons during the course of your interview?

A Yes.

Q That was a bad question.

While you were interviewing the defendant, did you ask him whether he had seen anyone with weapons in Pakistan?

A Yes. We asked him if he had seen Zarein Ahmedzay or Najibullah Zazi with weapons, or training on any weapons, or carrying any weapons, transporting any weapons, or if he himself had done any of those things. And he said no as to all those questions. No training, not carrying, never, never anything to do with weapons.

Q Did you ask the defendant about interactions he had with Najibullah Zazi upon the return to the United States?

A Yes.

MR. DINNERSTEIN: Object for the same reason as before. I think he's leading the witness.

THE COURT: Overruled.

A Yes. He said that he had returned back, the defendant had returned back, in September. Najibullah had returned back in January. He said it was the same day as the Hudson -- the plane landing on the Hudson. And then a few days later, a couple of days later, they had met up at a local mosque again.

Q Again, did the defendant say anything about the last time he saw Najibullah Zazi prior to your interview of him on the 17th?

A Yes. He said that Najibullah had sent him affection, saying, I'll be there in one week. He knew he was coming, and that he had met up with them on that Thursday, September 10 for the evening prayer, and afterwards they broke fast together.

Q Did the defendant indicate, one way or the other, whether he had expected to see Najibullah specifically at the mosque at the time he saw him?

A No, it was not prearranged for that specific meeting,

time or place.
Q During the course of your interview, did the defendant describe who paid for his living expenses?
A Yes. He said that his parents paid for his living expenses, and he saved the $220 or so that he earned from working.
Q Can you describe the defendant's demeanor during the course of the interview?
A Yes. Again, it was friendly, polite, conversational. We had taken breaks, bathroom breaks, food, things like that. It was friendly conversation, good demeanor.
Q During the course of the interview, did the topic of religion come up?
A Yes.
Q Who brought that topic up?
A The defendants.
Q Was that topic brought up once or more than once?
A Multiple times.
Q At the end of the interview, did the defendant agree to give search samples?
A Yes, he did.
Q What did he agree to do?
A We asked for samples of certain things: Handwriting, voice, shoeprint, mouth swab for DNA, fingerprints, things like that.

Q And did the defendant agree to provide those things?
A Yes.
Q And how did the defendant get back home after the interview?
A We drove him home.
Q Can you describe the general tone and nature of the conversation, if any, with the defendant in the car driving him home?
A Yes. It was just general conversation, light topics, none of the substantive interview topics that we talked about. That's all.
Q Directing your attention to January 7, 2010, did you have any interaction with the defendant on that day?
A Yes.
Q Now, between September 17, 2009 and January 7, 2010, did you have any interaction with the defendant?
A I do not.
Q Did you attempt to interview the defendant during that time period?
A No.
Q Why not?
A Mainly because we learned that he had retained an attorney. We didn't think an attempt at an interview would be fruitful.
Q Now, what was your first interaction with the defendant

on January 7, 2010?
A We had gone to the defendant's residence to execute a search warrant.
Q What was the search warrant for?
A His passports.
Q Can you please describe for the Court the interactions you had with the defendant while executing the search warrant?
A Yes.
It was polite. Detective Maysonet and myself knocked on the door. The defendant answered. We told him that we had a search warrant, we were there lawfully, asked if we could come in. He invited us in. We asked if he would like us to take our shoes off. We did. It was friendly.
Q When you say you knocked on the door, where did you knock on the door?
A Just standing knocking on the front door of the residence.
Q Where was the residence?
A I'm sorry.
Apartment 6A of 2924 137th Street, Flushing.
Q When you entered the residence, what did you do?
A We had some light conversation. We told him why we were there with the search warrant. We explained what we were there for. We asked who else was home, just for safety reasons. He said his sister was home, but she was sleeping.

Then we told him we were there for his passports.
Q Did you give the defendant a copy of the search warrant?
A Yes, we did.
Q Did the defendant have a reaction after you gave him the search warrant?
A Yes. He asked if we had contacted his attorney. We said no. We were there from the court. He could contact his attorney if he would like. He asked what the numbers of the violation on the search warrant meant.
Q What did you respond to him?
A I told him he could either look them up or ask his attorney.
Q Was the defendant restrained at any time during the execution of the warrant?
A No.
Q Did you obtain the defendant's passports?
A Yes.
Q How did you obtain them?
A His sister had woken up. She came out into the common area where we were. We explained what we were there for, asked her for the passports, and she retrieved them from the closet.
Q And she gave you passports?
A Yes.
Q What happened after you obtained the passports?

A I looked through them, made sure it was what we wanted. I returned the other family members' passports back to the defendant's sister, and then completed -- it's a receipt form that we provide when we take things, we seize things.

Q Did the defendant sign that receipt form?

A Yes, he did.

Q What happened after the defendant signed the receipt form?

A Detective Maysonet asked him what name he had signed on the bottom of the sheet form. He asked him if he had used the name -- if he signed the name Mohammed.

Q What was the significance of Detective Maysonet asking the defendant if he used the name Mohammed to sign the receipt form?

A It let the defendant know that we were aware of his kunya, his name in Pakistan, and his activities there.

Q Did the defendant have a reaction when Detective Maysonet asked if he had signed the receipt form Mohammed?

A Yes. The defendant was visibly shaken. I can see the skin tone went a little more pale. His mouth was open, but he wasn't saying anything. He took a couple of steps towards another room, but came right back in to us. He was definitely shaken.

Q How long would you estimate that you were in the apartment executing the search warrant?

A About a half hour.
Q And what happened after you obtained the receipt form and you observed the defendant's reaction to being called Mohammed? What did you guys do?
A Left. Went back to the office.
MR. LOONAM: Just for the witness, your Honor.
THE COURT: Go ahead.
Q Showing you what's marked as Government's Exhibit 122.
Do you recognize Government's Exhibit 122.
A Yes, I do.
Q What do you recognize it to be?
A That is the defendant's U.S. passport.
Q I'm going to show you 125-A, 125-G, 125-H, 125-I, 125-J and 125-M?
Do you recognize the photographs depicted in the Government's Exhibits that I just referenced.
A Yes, I do.
Q What do you recognize these photographs to depict?
A Those are various pages from the defendant's passport.
MR. LOONAM: Your Honor, the government moves to admit and 125-M, 125-J, 125-I, 125-H, 125-G and 125-A at this time.
MR. DINNERSTEIN: No objection, your Honor.
THE COURT: Received.
(So marked.)

Q Publishing 125-G. What's depicted on Government's Exhibit 125-G?

A I believe it's page ten. It is -- I see a little bit of a glare. If you could tilt it, it would help me out.

It looks like a Saudi Arabian Haj visa.

Q And Government's Exhibit 125-H?

A This is a Omra visa from the King of Saudi Arabia.

Q And publishing 125-I. Do you recognize that?

A Yes.

Q What do you recognize it to be?

A That is an entry visa for Pakistan.

Q Just going back to 125-H, you testified that this was an Omra visa?

A Yes.

Q Can you tell the Court what Omra is?

A It's a pilgrimage to Mecca. There's Haj and Omra. This is one of those trips.

Q And so when you referred to Haj before, that's also a pilgrimage to a holy city, to Saudi Arabia?

A Yes.

Q Back to 125-I. What is 125-I?

A This is the Pakistani entry visa from that passport.

Q Do you see the date of issue on this visa?

A Yes. It's 8-26. August 26, 2008.

Q That's this here?

A Yes.
Q Do you see what the duration of this visa is?
A It is a one-month duration. It allows a one-month stay.
Q Is one month from when?
A One month from entry. There's a window between 8-26, August 26 and 11-25, which is the next line, where you're allowed to enter. Once you're in through that window, you get to stay for one month.
Q And publishing Government's Exhibit 125-M.
Are you able to make out what that is.
A Can you zoom out a little bit? Yes, this is an extension for that same visa from Pakistan.
Q It was issued when?
A On September 20. That's a 9 -- it's a 20-9.
So, 9-20 would be our version of September 20, 2008.
Q And extended the visa for how long? Can you make it out?
A No. I'm sorry.
Yes. So, it's extended up to 12-16, December 16, 2008.
Q Again, this was issued on September 20, 2008?
A Yes.
Q Is this the passport that you seized when you went to the defendant's house?
A Yes.
Q Where did you go after you seized the defendant's

passport?
A Back to the JTTF office.
Q At some point while you were at the JTTF after executing the search warrant, did you learn of a development in the investigation of the defendant Adis Medunjanin?
A Yes. While back at my desk, I received a phone call from one of the surveillance team members, telling me after we had left, the defendant had gotten into his car, left, gotten into a car crash, and they had then had him handcuffed on the side of the expressway.
Q How long approximately after the search warrant did you learn that?
A About two hours.
Q And after learning that the defendant was being detained in connection with a car crash, did you attempt to interview him?
A I'm sorry. Can you repeat that?
Q Yes?
After learning that the defendant was being detained in connection with the car crash, did you attempt to interview him.
A Yes, we did.
Q Where did that interview occur?
A At the hospital he was taken to, New York Hospital, Queens.

Q Were there other investigators from the JTTF with you during the interview at the hospital?
A Yes. I went with Detectives Murphy and Carney.
Q And were you joined by another detective from the JTTF?
A Yes. Detective Maysonet joined up with us.
Q Upon arriving at the hospital, what did you do?
A We went into the emergency room. We knew that the defendant had been taken there from the scene via ambulance, so we went into the emergency room. I went up to the desk that's in the emergency room there, spoke to the person behind the desk, asked -- told them who we were there to see, pointed us to the right bed, asked if the defendant was unconscious, on any medication, alert, if we could speak to the defendant, and the person there said, No medication, was alert, and we could speak to him.
MR. DINNERSTEIN: Objection, your Honor, to that.
THE COURT: Sustained. Strike it.
Q How long were you with the defendant at the hospital?
A It was about two hours.
Q And what happened at the end of that two-hour period?
A The defendant was medically cleared, and we went back to the JTTF office.
Q You said the defendant was medically cleared. What had to happen while you were with the defendant for him to be medically cleared?

A The medical personnel had to finish their examinations, do their examinations. I believe there was an x-ray that they did. The defendant signed some paperwork, and we were cleared to leave.

Q Was the defendant given any treatment or medication during his time at the hospital?

A No.

MR. DINNERSTEIN: Objection, your Honor.

THE COURT: Sustained. Strike it.

Q Describe how the defendant -- when you left the hospital, how did the defendant leave?

A He walked out with us under his own power.

Q Describe how the defendant was situated physically when you first arrived at this hospital?

A When we first approached him, he was laying down on a hospital bed, he was strapped to a backboard, had a neck brace on, and was handcuffed to the board, as well.

Q What was the defendant's reaction, if any, upon seeing you?

A The defendant recognized me. We recognized each other, said hello.

Q What was your impression of the defendant's mental awareness at the time?

A I felt he was alert and aware. He was answering questions. He recognized me. He was giving appropriate

answers.
Q Was anything done with respect to the defendant's restraints?
A Yes. As soon as we went over, I introduced the detectives that were with me, because he had not met them before, and while I was doing that or right before I did that, we undid the handcuffs, we took the handcuffs off, so he could shake hands with the detectives.
Q Were there any discussion about the other restraint on the defendant?
A Yes. The defendant asked if we could unrestrain him, take him off the backboard, take the neck brace off. We told him that was up to the medical personnel. We couldn't do that.
Q Now, did you question the defendant while at the hospital?
A Yes, we did.
Q Was he advised of his Miranda rights prior to questioning him?
A Yes, he was.
Q Did he waive those rights?
A Yes, he did.
Q Who administered the Miranda warnings to the defendant?
A I did.
Q Prior to administering the Miranda warnings, did either

you or either of the detectives discuss some ground rules for the interview?
A Yes. There were some ground rules set. We knew he was represented by an attorney. We told him he didn't have to talk to us. It was totally up to him. We could talk about certain topics that he was comfortable speaking with, and skip over other topics he didn't want to talk about. We could stop talking at any time. These were all up to him.
Q Tell the Court how you administered the Miranda warnings.
A The defendant was still laying down at this point. I told him about the form. I held the form over, so he could read them. He read them aloud and signed the form.
MR. LOONAM: Just for the witness, your Honor.
Q I'm showing you what has been marked for identification as Government's Exhibit 310.
Do you recognize Government's Exhibit 310.
A Yes, I do. That is the signed advice-of-rights form from that night.
Q Do you recognize your signature on this document?
A Yes.
Q And do you recognize the defendant's signature on this document?
A Yes, I do.
MR. LOONAM: Your Honor, the government offers Government's Exhibit 310 at this time.

MR. DINNERSTEIN: No objection.

THE COURT: Received.

(So marked.)

Q Looking at this form, there's a time listed here. Are you able to read that time, and what does it indicate?

A Yes. That's 1750. That's the time that the form was introduced by me.

Q There's also a time down at the bottom of Government's Exhibit 310. What does that time indicate?

A That is when the form was signed or executed and given back to me.

Q There's a signature here, where it says "Witness." Whose signature is that, the top line, the first witness?

A That first one there is my signature, and that second one is Detective Murphy's.

Q And then here, there's a signature underneath a statement. Can you read the statement aloud?

A Yes.

The statement is "I have read this statement of my rights, and I understand what my rights are. At this time, I am willing to answer questions without a lawyer present."

Q Whose signature appears there?

A That is the defendant's.

Q And when did the defendant sign this form?

A 1752 of that night, after reading it and signing.

Q Can you translate the 1752?
A Sure. It's 5:52 p.m.
Q At the outset of the interview, did anyone set any limitations on the interview?
A Yes.
Q Tell us about that.
A The defendant set up some of his own rules or limitations. He said that Islamically, he would not be permitted to speak about his brothers. So, we agreed to move forward.
Q Why did you agree to setting limitations to the interview?
A Mainly because we just wanted to get the interview going, getting moving on it, and we knew who his associates or friends were.
Q Now, did the defendant discuss how he viewed himself during the interview?
A Yes.
Q What did he tell you about that?
A The defendant explained that he viewed himself as a prisoner of war captured on the battlefield. He asked if we would be willing to exchange him for a U.S. soldier that was captured by the Taliban.
Q Now, while at the hospital, did the defendant discuss the car crash he had just been in?

A Yes, he did.
Q What did he tell you about the car crash?
A He told us that after we had left his house, after -- he knew that we knew what his activities were in Pakistan, we used his kunya, that was something that no one else really knew, we were aware of his activities. He wanted to do an act of jihad before being arrested.
Q Well, what did the defendant say his act of jihad was, if any?
A He said that he would get in his car, he would get the car going as fast as he could, he would crash it into another car, causing a large explosion, which would kill himself and others.
Q You used the term kunya. What is a kunya?
A Kunya is -- it's a false name used by those in Al Qaeda, mainly. It's a name that they will know each other by which won't link back to their true identity.
Q What did the defendant say he hoped to accomplish, if anything, by crashing his car?
A He wanted to draw attention to the way Muslims were being reflected recently. It was the Christmas Day bomber that had recently been getting attention in the news.
Q Was there any discussion what the result of the crash would be?
A Yes, a large explosion. He would die, the others in the

car would die, as well.
Q Now, when you testified about that, you testified as "would," that he would do this. Was this discussed as a plan, or was it discussed as something that he did?
A No. This was being discussed as past tense. This is what happened after we had left his residence, and between the time of us interviewing him at the hospital.
Q Now, did the defendant describe any other actions he took in connection with his act of jihad?
A Yes. I asked him how this was -- would be viewed any differently than all the other car crashes that happened during rush hour. He said that he wanted everyone to know what he was doing. He called 911 and explained it to the 911 operator.
Q What did he tell you he said to the 911 operator?
A He said while accelerating his car, he had called 911. He said he told the 911 operator, We love death more than you love life, and there is no God but Allah, and Mohammed is his messenger.
Q Did you discuss other topics while at the hospital?
A Yes, we did.
Q Did you continue to discuss those topics later?
A Yes.
Q How did the interview at the hospital conclude?
A The defendant was checked out by the medical personnel,

released. He signed a release form. We left. We drove him back to the JTTF office.
Q Was there any discussion with the defendant while he was being transported to the JTTF office?
A Yes. It was not about the substantive topics. Again, we were going to order food. We discussed food options, and made some food plans.
Q What was the defendant's demeanor at this point?
A Calm, friendly. He was in the car. We were just having light conversation.
Q At any point, did the defendant describe any physical discomfort?
A Yes. At some point before being released sometime in the hospital, he complained of some shoulder pain.
Q Now, can you describe the room where the defendant was taken to at the JTTF offices?
A Yes, it's one of our multi-purpose rooms. It's not in the main office space. It has a table, some chairs, there was a couch in there. It's just used for various things.
Q And after arriving at the JTTF, did you immediately dive back into the substantive interview?
A No. We had gotten food, we ate, discussed other topics.
Q Do you remember generally what some of the topics were that came up?
A I don't. Maybe sports. We knew he was a Jets fan. We

may have discussed football.

Q Did you resume your discussion on the substantive topics?

A Yes.

Q Can you tell the Court generally what topics you covered with the defendant during his interview?

A Yes. We discussed in much greater detail --

MR. DINNERSTEIN: I would object to "we." I don't know who "we" is referring to.

THE COURT: Overruled.

A We discussed more in depth his trip to Pakistan, what had occurred there, his associations with Najibullah Zazi and Zarein Ahmedzay, and some more of the car crash.

Q How long did you speak with the defendant? What time do you think that interview ended that began on January 7?

A My estimate is about four hours. We wrapped up about 2:00 a.m.

Q How did that interview end?

A It was ended by us. It had been a long day for everybody. We weren't making much headway. We decided to call it a night.

Q Was there a discussion with the defendant about whether he wished to continue speaking the next day?

A Yes. We gave him the options. There were two: He could stay with us, he could continue to talk with us the next day, we would provide him with a place to stay, whatever he needed, or the other option was, he was being arrested, he would be taken to a detention center, and taken to court the next day.

Q Did the defendant execute any additional waiver forms? What did he decide to do?

A He decided that he wanted to stay with us, keep talking the next day. We provided a form, a waiver of speedy arraignment, which he read and signed and gave to us.

MR. LOONAM: Just for the witness, your Honor.

Q Showing Government's Exhibit 311.

Do you recognize this document.

A Yes, I do. It's the waiver of speedy arraignment form from that night.

Q Do you recognize the signature -- the special agent's signature on this document?

A That is my signature.

Q There's a line for Adis Medunjanin. Who signed on that line?

A The defendant.

Q When was this form executed?

A Technically, the 8th, at this point. January 8 about 2:00 a.m., when we were wrapping up.

MR. LOONAM: Your Honor, I offer Government's Exhibit 311 at this time.

THE COURT: Any objection?

MR. DINNERSTEIN: No objection.

THE COURT: Received.

(So marked.)

Q At this point, on this form, was the defendant advised that he was being charged with any particular crimes?

A Yes. On the form there, I believe it's the first paragraph there, "receiving military-type training from a foreign terrorist organization."

Q Did the interview with the defendant continue the next morning?

A Yes, it did.

MR. LOONAM: Just for the witness, your Honor.

Q Showing what's marked for identification as Government's Exhibit 313. Do you recognize Government's Exhibit 313?

A Yes. This is another advice-of-rights form from that second day.

Q And when was this form executed?

A About 12:20 p.m.

MR. LOONAM: Your Honor, the government offers 313.

MR. DINNERSTEIN: No objection.

THE COURT: Received.

(So marked.)

Q Again, whose signature appears there?

A Defendant's.

Q And this is for what date?

A January 8, 2010.

Q What time was this form administered?
A 12:19.
Q What time was the form signed?
A 12:20.
Q Your signature appears on this form?
A Yes. It's the first witness line there.
Q Again, what's the statement that appears above the signature?
A The statement is: "I have read this statement of my rights, and I understand what my rights are. At this time, I am willing to answer questions without a lawyer present."
Q Now, between the interview on the 7th and the 8th, what topics did you cover with the defendant?
A During those interviews, we discussed the trip to Pakistan, the training the defendant had received, who he had traveled with, what type of training he received, and any potential attacks against the United States.
Q Was there any discussion of the time before the defendant traveled to Pakistan?
A Yes. I'm sorry. We also discussed what had led up to the trip to Pakistan, about the time frame before their travel.
Q What did he tell you about that?
A The defendant told us that he had become more religious during this time period before their trip. He was angered and

outraged by the way Muslims were being treated, specifically at Abu Ghraib. He began to talk more about the violent form of jihad to his friends and associates, both at the mosque or at basketball games, but really, no one had the balls to do anything. Those are the defendant's words.

Q And did the defendant tell you whether he decided to take any action?

A Yes. He decided that he needed to do something. He needed to take that next step and not just talk about things.

Q Did he tell you what the next step was that he decided to take?

A Yes. He said that he decided that he needed to go to Afghanistan to fight against U.S. troops there, in order to fight and kill U.S. troops.

Q Now, during the course of the interview, you testified before that the defendant wasn't going to talk about his Muslim brothers; correct?

A Yes.

Q Did that change during the course of the interview?

A Originally, he continued to attempt not to talk about other people, but it did change, and we eventually started talking about his two associates, Zarein Ahmedzay and Najibullah Zazi.

Q Now, did the defendant name who, if anyone, he decided to travel overseas with to commit jihad?

A Yes. He said that the three of them would travel. It was Najibullah Zazi, Zarein Ahmedzay and the defendant. Their plan was that Zarein and Najibullah fit in, they had good reason to travel there, wouldn't get noticed. But they came up with a plan, the wedding story for the defendant, so that he could travel there without being scrutinized.
Q Did the defendant tell you what he expected to do upon arriving in Pakistan?
A Yes. He expected to cross over from Peshawar into Afghanistan through the Torkham border area in order to go fight the U.S. troops.
Q Did the defendant tell you what his long-term goal was in Afghanistan?
A Yes. He wanted to be a fighter, he wanted to become this great leader, leader of troops on the battlefield, like the great Muslim, I believe it's Soldier or Leader or General Sohaib.
Q Did the defendant say he traveled to Pakistan?
A Yes. They did travel to Pakistan.
Q Was there any discussion of where the defendant went after arriving in Pakistan?
A Yes. They were picked up at the Peshawar airport, brought to Najibullah Zazi's uncle's house there in Peshawar. This is all three of them. This is Najibullah, Zarein and the defendant.

Q And was there any discussion of an attempt to cross into Afghanistan?
A Yes. He said that they attempted to cross over through the Torkham border area. They took a taxi from the Peshawar area. They were heading toward the gate or the border, but they were stopped at a checkpoint. The Pakistani army stopped them at gunpoint, because they noticed the defendant, who was sitting in the cab. He didn't fit in. He was much lighter-skinned than the rest of them. He was picked out, and they stopped the car.
Q Did the defendant tell you where he went after he was stopped at the checkpoint?
A Yes. They were not permitted to cross. They returned back to Peshawar, Najibullah's uncle's house.
Q Did the defendant tell you whether or not he was actually able to obtain training?
A Yes, he did.
He explained that when they returned back to Peshawar with this frustrated attempt at crossing over into Afghanistan, they began to look to ways where they could get training in Waziristan.
Q Did the defendant tell you how he got the training?
A Yes.
Q Tell us.
A He said that Najibullah's cousin was there,

Amanullah Zazi. They had asked him if he could help them get into Waziristan training camp in Waziristan.

Amanullah was able to help them. He said they'd visit a new mosque right in the area of the residence of the uncle's house, where there were -- they were hooked up with a facilitator that took them to Waziristan.

Q Did the defendant name the facilitator that they were put in touch with?

A Yes. His name was Ahmed.

Q Did the defendant call -- what name did the defendant use originally for that individual?

A Originally, the defendant was referring to this same facilitator as Abdullah. Throughout the interview, when it came up a couple of times, he switched and called him Ahmed. We called him out on it, and he said that was the real name of the facilitator. Ahmed was the true name.

Q Did the defendant state where he traveled to get training?

A Yes. They were taken to a town in Waziristan called Miram Shah.

Q Did the defendant describe the route they took to get to Miram Shah?

A Yes. They traveled by car. They stayed off the main road or highways. They took side roads or smaller, less-traveled roads in order to avoid checkpoints where they would be stopped.

Q Did the defendant describe who he traveled to Miram Shah with?

A Yes. Najibullah Zazi, Zarein Ahmedzay, the facilitator Ahmed, and there may have been a helper or someone else in the car.

Q Did the defendant tell you where he stayed while in Miram Shah?

A Yes. They spent one night at a local pashtun's house, and another night they stayed at a hotel there in Miram Shah.

Q Did the defendant provide any description of this hotel?

A Yes. He said it was a small, you know, unofficial hotel associated with the Taliban. The three of them were put in one room. There was two beds there. They had another bed moved in, where the three of them stayed in the same room. They were told not to -- he was told not to speak English, because it would draw attention to them unnecessarily.

Q Was there any discussion of what they did with their time while they were in the hotel?

A Yes.

There was not much to do. There was the three of them there, just waiting. But there was a computer set up in the common area of the hotel, where there were videos being shown to them, and another group of men who were also staying there. The videos they were shown were attacks against U.S.

troops, bombings, martyrdom missions, things like.
Q When you are referring to "martyrdom missions," what are you talking about?
A Suicide bombing.
Q Did the defendant state who he believed -- strike that.
Was there a discussion about what these videos depicted, if they depicted a particular group carrying out these attacks?
A Yes. He told us he believed it was the Taliban conducting these attacks.
Q Was there any discussion of an argument with Najibullah Zazi or Zarein Ahmedzay while at the hotel?
A Yes, there was. He said the three of them did get into an argument at the hotel. They were -- Najibullah Zazi and Zarein Ahmedzay were speaking in Pashtun. The defendant felt that he was not being kept apprised of what was going on. They were leaving him out of things, not conferring with him for decisions. They got into an argument, which got heated. The defendant said he punched the wall in the hotel.
Q Now, did the defendant describe where he ultimately obtained his training from?
A Yes. He did. He ultimately said it was Al Qaeda.
Q Did the defendant describe how he got from this Taliban hotel to his Al Qaeda training?
A Yes. He said the next day, I believe it was, they were

picked up. A caravan of cars came to pick them up. Two leaders, people who seemed of importance got out and approached them and offered them the opportunity to go to a training camp.

Q Did the defendant tell you the names of these leaders that came to pick him up at the hotel?

A Yes. One was Ibrahim, the other was Abdul Hafeez.

Q Did the defendant provide a description for Abdul Hafeez?

A Yes. He said Abdul Hafeez was a taller, dark-skinned man, dark-skinned like an African, who spoke English.

Q Did the defendant indicate what country Abdul Hafeez was from?

A Yes. He said he was from Somalia.

Q Did the defendant provide a description for Ibrahim?

A Yes. He said Ibrahim was also taller, slender, dark-skinned like a Pashtun, and spoke English with a British accent.

Q Now, what, if anything, did the defendant say about his initial interaction with Ibrahim and Abdul Hafeez?

A He said that Ibrahim and Abdul Hafeez spoke to him in English. They said that this was a serious moment. He had a serious decision for them to make. They would be provided an opportunity to become martyrs and taken to a training camp.

Q And did the defendant tell you what his decision was with respect to whether to go to the training camp?

A Yes. He said they decided to go to the training camp.
Q And where was the defendant when he was approached by Ibrahim and Abdul Hafeez and told about the opportunity for training and the martyrdom operation?
A Miram Shah.
Q Now, did the defendant make any statements as to whether he had further discussion with Abdul Hafeez about suicide-bombing operations at any time?
A Yes.
He said they were approached more than once by Abdul Hafeez regarding the opportunity to become martyrs.
Q Did the defendant describe any of the details of the operations he said Abdul Hafeez wanted him to carry out?
A Specific -- can you repeat that?
Q Yes.
Did the defendant describe any of the details of the operations he said Abdul Hafeez wanted him to carry out?
A Yes. He said that Abdul Hafeez had certain missions planned out. One was where the defendant would pretend to be a journalist. His English-speaking skills could get him close to one of Pakistani generals, close enough where he would detonate a suicide vest, killing the general.
Another one -- sorry. One second.
Q Were there multiple discussions of different types of operations that Abdul Hafeez wanted the defendant, Najibullah

and Zarein Ahmedzay to carry out?
A Yes, there were.
Q Where were all of targets located that the defendant told you about?
A Pakistan or Afghanistan. One of the other targets was the Pakistani ISI. The defendant would get close enough to ISI headquarters and detonate his suicide bomb there.
Q What, if anything, did the defendant tell you about whether he accepted any of these missions to conduct the suicide-bombing attack inside Pakistan?
A The defendant said he did not accept any of the missions for inside Pakistan.
Q Did the defendant discuss whether he was -- hold on.
Did the defendant tell you whether or not he discussed becoming a suicide bomber with Najibullah Zazi and Zarein Ahmedzay?
A Yes. He said they discussed it amongst themselves at first. When they were first approached, they were solemn. This was -- this is not what they came here to do. They wanted to go to Afghanistan to fight and kill the U.S. troops there, be great generals on the battlefield. But they continued on, because they wanted to go to a training camp. Ultimately, they decided that they were better off joining the Taliban rather than Al Qaeda -- they would have been better off.

Q Now, did the defendant tell you about one conversation or several conversations that he had had with Najibullah Zazi and Zarein Ahmedzay?

A Several conversations.

Q Did the defendant tell you whether or not he seriously considered becoming a suicide bomber?

A Yes, he did.

Q Did the defendant tell you about whether he used his true name while in Waziristan?

A Yes. He said he used his kunya while he was in Pakistan, Mohammed, or the full, drawn-out version would have been Mohammad Ibn Abdullah Al Chechni Al Suri.

(Continued on next page.)

BY MR. LOONAM:

Q And did the defendant indicate whether or not Najibulah Zazi and Aj,edzau also had fake names?

A Yes they had fake names as well. Najibullah had chosen Salideem and Aarein had chosen Ahmad.

Q And did the defendant tell you whether someone directed them to change their names?

A Yes, this was under Abdul Hafeez' instructions.

Q Now, did the defendant tell you what happened after he agreed to go for training with Abdul Hafeez?

A Yes, he said that they travelled with Abdul Hafeez until they got to a training camp.

Q And did they have any discussion with Abdul Hafeez on the way to the training camp?

A Along the way Abdul Hafeez -- they spoke English, so Abdul Hafeez was pointing out locations where he said the Muslim Brothers had carried out successful martyr operations against Pakistani army.

Q And did the defendant describe the destination where he received the training?

A Yes, there was a training area they were taken to. Defendant described this area as containing several houses, an area for a classroom instruction and area for hands-on training with the weapons.

Q And what did the defendant tell you happened when he

arrived at this training area with Abdul Hafeez, and Najibullah Zazi, and Zarein Ahmedzay?
A He said they were introduced to Yousef. This was an English speaking trainer that was there. Seemed to be in charge of the training camp. He was there day-to-day training.
Q And did the defendant provide a description for Yousef?
A Yes. Yousef was an African American, 20 something male, slim, English speaking.
Q Now, in addition to Yousef, did the defendant say whether or not he was trained by anyone else?
A Yes. There was also another trainer there. Said it was an Arab-English speaker as well. This person said that they had been fighting Jihad since before September 11th.
Q Now, did the defendant describe the general types of training that he received?
A Yes, there was general religious training and weapons training.
Q Let's focus on the religious training first. What type of religious training did the defendant say he received?
A They received religious training in general but specifically they were also instructed on benefits of fighting and dying for Jihad.
Q And what type of weapons training did the defendant tell you he received?

A There was classroom training and hands-on training. They learned they had different weapons that they were trained on. They learned the working parts, how to assemble an disassemble the weapons, names for these parts, spoke in English and Arabic, handled the weapons, shooting positions. They culminated with a day of actually firing the weapons.

Q Which weapons did the defendant tell you that he was trained on?

A An AK47, rocket propelled grenade launcher, and pistol, I believe.

Q AK47, pistol, a rockedt propelled grenade. Any other weapon?

A PK machine. PK machine gun the defendant referred to as Pica (ph).

Q What did the defendant tell you he learned about the AK47?

A He learned the working parts, the names, the both in English and Arabic, how to handle the weapon, different shooting positions, and eventually shot AK47. On that day he shot about 30 rounds or a magazine's worth.

Q And what did the defendant tell you he learned about the PK machine gun?

A Same thing with the working parts; shooting positions. Same.

Q And RPD?

A Yes, same.
Q How long did the defendant say the weapons training lasted?
A About two weeks.
Q Was the defendant ever asked to if he had shot at live people?
A He was.
We asked him if he ever shot at live people or maybe abandoned vehicles or anything like that. He replied that -- his words: I never got the chance to shoot at U.S. soldiers.
Q Did the defendant discuss any videos he was shown during the course of his training?
A Yes. They were shown several videos. There was the topics of the videos, the videos themselves were 911 attacks opt, World Trade Center, Madrid bombings, London bombings, martyrdom operations.
Q And did the defendant indicate who he believes was responsible for conducting those attacks?
A Yes. The defendant said that he knew that all al-Qaeda was responsible for the London and Madrid bombings, but he did not believe that the al-Qaeda was responsible for the 911 attacks.
Q Now, did the defendant describe his relationship with Yousef?
A Yes. He described his relationship with Yousef as a more

friendly. They would joke around.

Q And did the defendant discuss his relationship with Abdul Hafeez?

A Yes. The relationship with Abdul Hafeez was less friendly. It was more rigid. Abdul Hafeez was the Amir of the camp, the guy who was leader, he wouldn't joke with him.

Q Now, did the defendant describe any discussions he may have had with Abdul Hafeez about his value to al-Qaeda?

A Yes. Abdul Hafeez believed that the defendant was very valuable. He had certain skills or attributes that were special. He referred to the defendant as a diamond. These skills were speaking English, being from America, light skinned.

Q Now, did you ask the defendant if there's any discussions about potential targets within the United States?

A Yes, we did.

Q And what was his response?

A Defendant said there was no talks of potential targets within the United States.

Q Did you ask the defendant whether there was any discussion of plots within the United States?

A Yes, we discussed, you know, the possibility of any plots within the United States. Defendant had talked about some brain storming sessions where they had come up with ideas, and the defendant said there was no plots or plans for anything

within the United States.
Q Now, you testified that the defendant told you that he decided against becoming a suicide bomber, correct?
A Yes.
Q Did the defendant tell you whether he informed Abdul Hafeez of his decision?
A Yes, he did. He told Abdul Hafeez that he would return to the United States and tell others of other recruits -- to send other recruits and money back to Abdul Hafeez.
Q And was there any indication whether Abdul Hafeez intimidated or pressured the defendant after the defendant gave him his final answer?
A No, there was never talk of any intimidation or anything like that.
Q And so, you discussed this potential idea that the defendant raised. What did the defendant tell you he decided to do after he turned down the idea of becoming a suicide bombing operative?
A The defendant decided that he would return back to the United States, and follow through with that plan.
Q And what was that plan?
A To send other recruits back to Abdul Hafeez.
Q And did the defendant tell you what organization he believed Abdul Hafeez was affiliated with?
A Yes, he believed -- he knew al-Qaeda. Abdul Hafeez was

associated with al-Qaeda.

THE COURT: How much more do you have, approximately?

MR. LOONAM: Probably 15 minutes.

THE COURT: Let's take our afternoon break. Don't discuss the case. We will resume in ten minutes. All rise.

(Whereupon, the jury exited the courtroom)

THE COURT: Don't elicit racist jokes.

MR. LOONAM: I don't intend to, Your Honor.

(Court recessed); (Court resumed)

(The following took place in the presence of the jury)

THE COURT: Please be seated, everyone.

MR. LOONAM: May I continue, Your Honor.

THE COURT: Yes.

DIRECT EXAMINATION CONTINUED

BY MR. LOONAM:

Q Before the break you told us that the defendant told you that he agreed too continue working for al-Qaeda inside the United States, when did he tell he you he agreed to -- what did he tell he agreed to do with al-Qaeda?

A The defendant had agreed or had told Abdul Hafeez that he would return back to the United States, he would send other recruits and money back to al-Qaeda.

Q Did the defendant tell you whether or not he discussed

this plan with Najibullah Zazi?
A Yes.
Q What did he tell you about?
A He said that they had discussed it with Najibullah Zazi. He had discussed it with Najibullah Zazi.
Q Did the defendant tell you whether or not he discussed this plan with Zarein Ahmedzay?
A Yes, he had also discussed it with Zaerein Ahmedzay.
Q Did the defendant tell you whether he stopped working for al-Qaeda at any point?
A No, he did not mention that.
Q Did the defendant tell you where he went after his al-Qaeda training?
A Yes.
Q What did he tell you about how he got to where he was going?
A He said that he was driven back from the training camp by Ahmad.
Q And where did Ahmad drive him from the training camp to?
A A town just south of Peshawar, Koha (ph)
Q And was this the same Ahmad who brought the defendant to Abdul Hafeez?
A Yes.
Q Did you have any discussion with the defendant about his visa extension?

A Yes. He said --
Q Sorry, what he did tell you about that?
A He said that his his passport had been taken originally by Abdul Hafeez who had given it to Ahmad, and then, when it was returned back to him the extension was there. The visa was extended, the stamp was in there.
Q Did the defendant tell you when he got his passport back?
A Yes, I believe it was on the return trip.
Q Now, the defendant in a prior interview had told you that he had brought $3,000 to Pakistan; correct?
A Yes.
Q Did the defendant make any statements with respect to that money during this interview?
A Yes, he said that he had donated that money -- $2,000 of it.
Q And what did he say he gave that money to?
A The Taliband.
Q Now, did you show the defendant a photographs during the course of your interview on January 7th and 8th?
A Yes, we did.
Q Can you please describe the procedure you used to show the defendant photographs?
A We used the photo book, had a lot of photographs in there. Photographs were both of people that we knew that he should know, people that he may have known or met, and people

that we knew that he did not know, and those are in there to kind of gauge his truthfulness.

Q And in what context were those photographs shown to the defendant?

A There was no context of the photographs provided. It wasn't -- there was no story or back end it to. We just provided the photographs to him to flip through the book one by one, and tell us what he knew, each person or didn't know about each person.

MR. LOONAM: Just for the witness, Your Honor.

THE COURT: Yes.

Q I'm showing you what's been marked for identification as Government Exhibit 550.

Did you show the defendant the photograph depicted in Government Exhibit 550?

A Yes, we did.

Q And did the defendant identify the person depicted in Government Exhibit 550?

A Yes, he identified that person as Zarein Ahmedzay.

MR. LOONAM: Your Honor, the government offers 550.

MR. DINNERSTEIN: No objection.

THE COURT: Received.

(Government Exhibit 550 received and marked into evidence).

MR. LOONAM: For the witness only.

Q I am showing you what's been marked for identification as Government Exhibit 551. Did you show the defendant the person depicted in Government Exhibit 551?
A Yes, we did, and he identified that person as Najibullah Zazi.
MR. LOONAM: The government offers 551, Your Honor.
MR. DINNERSTEIN: No objection.
THE COURT: Received.
(Government Exhibit 551 received and marked in evidence)
MR. LOONAM: For the witness only.
Q I am showing you what's been marked for identification as Government Exhibit 552?
Did you show the defendant Government Exhibit 552?
A Yes, we did and he identified that person as Abadul Zazzi (ph).
MR. LOONAM: The government offers 552.
THE COURT: Any objection?
MR. DINNERSTEIN: No objection.
THE COURT: Received.
(Government Exhibit 552 received and marked in evidence).
MR. LOONAM: Only showing the witness 553 for identification. Let me zoom in here.
Q Did you show the defendant the picture contained in

Government Exhibit 553?
A Yes, we did.
Q And did the defendant identify the photo?
A Yes, he identified that photo as Ibrahim.
MR. LOONAM: The government offers 553, Your Honor.
MR. DINNERSTEIN: No objection.
THE COURT: Received.
(Government Exhibit 553 received and marked in evidence)
Q Showing you what's been marked as Government Exhibit 554 for identification. Did you show the defendant the photograph contained in Government Exhibit 554?
A Yes, we did and he identified that person as Zakeer (ph).
Q As what?
A Zakeer.
MR. LOONAM: The government offers 554.
MR . DINNERSTEIN: No objection.
THE COURT: Received.
(Government Exhibit 554 received and marked in evidence).
MR. LOONAM: Showing just the witness what's been marked for identification as Government Exhibit 555.
Q You showed the defendant the photograph depicted in Government Exhibit 555?
A Yes, we did. He identified this person as Yousef.

MR. LOONAM: The government offers 555?

MR. DINNERSTEIN: No objection.

THE COURT: Received.

(Government Exhibit 555 received and marked in evidence).

Q Now, did the defendant make any statements to you about al-Qaeda or its senior leader?

A Yes. During the interview he said that al-Qaeda are good people and he loves Osama Bin Laden more than he loves himself.

Q Did there come a time when the defendant was indicted?

A Yes.

Q And was the defendant approached to be interviewed after he was indicted?

A Yes, he was.

Q And did the defendant agree to be interviewed?

MR. DINNERSTEIN: Can we know the date they are talking about when he was indicted?

Q On January 8th was the defendant approached to be interviewed?

A Yes.

Q Had he been indicted on that day?

A Yes.

THE COURT: What year?

MR. LOONAM: Yes, Your Honor, 2009.

Q Is that correct? When was the defendant indicted?
A January 8th, 2010.
MR. LOONAM: January 8th, 2010.
Q And was the defendant approached after he was indicted to be interviewed?
A Yes.
Q And did he agree to be interviewed?
A No, he do not.
Q And I'm going to show -- what did the defendant say when he was approached to be interviewed?
A We approached him after the indictment. We explained to him -- we showed him a form. Explained to him that the form was about the indictment, the charges were on there, and that there were two choices on there, check boxes; one for I wish to spoke to my attorney, or I do not wish to speak to my attorney.
Q And what did the defendant indicate?
A Defendant said that maybe he should talk to his attorney and we indicated that we checked that box and initial next to it.
MR. LOONAM: Just for the witness, Your Honor.
THE COURT: Yes.
Q Showing you what's marked for identification as Government Exhibit 314.
Do you recognize Government Exhibit 314?

A Yes, I do.

Q What do you recognize it to be?

A That is the same waiver of speedy arraignment form that's discussed.

MR. LOONAM: And the government offers 314, Your Honor.

MR. DINNERSTEIN: No objection.

Let me just discuss with the prosecutor.

(Mr. Dinnerstein and Mr. Loonam conferred)

MR. DINNERSTEIN: No objection.

THE COURT: Received.

(Government Exhibit 314 received and marked in evidence)

Q Now, there was a prior speedy arraignment form, correct?

A Yes.

Q And on that form what did it indicate the defendant was being charged with?

A Receiving military style training from an FTO, Foreign Terrorist Organization.

Q And what charges are indicated on Government Exhibit 314?

A In that first paragraph it says here receiving military type training from a Foreign Terrorist Organization and the violation and conspiracy to commit murder in a foreign country violation.

Q And the defendant indicated that he wished to speak to

his attorney, correct?
A Yes.
Q After the defendant indicated that he wanted to talk to an attorney did anyone try to question him further?
A No.
MR. LOONAM: One moment, Your Honor.
THE COURT: Yes.
MR. LOONAM: No further questions.
THE COURT: Thank you, Mr. Loonam.
Mr. Dinnerstein.
MR. DINNERSTEIN: Thank you, Your Honor.
CROSS EXAMINATION
BY MR. DINNERSTEIN:
Q Now, sir, you just testified when Mr. Loonam asked you questions, that at some point he wanted his attorney; is that correct?
A Yes, yes, he did.
Q And up until that point, he had decided he didn't need his attorney; is that correct?
A Correct.
Q And in fact, you knew that his attorney was making efforts to speak to him on January 7th; is that correct?
MR. LOONAM: Objection, Your Honor.
THE COURT: Sustained.
Q Well, you spoke to the attorney?

THE COURT: Come up.

(The following took place at side bar)

THE COURT: Let's just keep straight. You have a right to examine to voluntariness, and the like but let's keep the Sixth Amendment and the Fifth Amendment part separate.

MR. DINNERSTEIN: I am bringing -- this is a a conversation with the lawyer on January 7th.

MR. LOONAM: Your Honor, we would move him in limine. I believe would have told in front of Judge Dearie that the actions of the attorney trying to find the defendant on the evening of his arrest in question was not going to come up on trial.

THE COURT: What is it you want to elicit?

MR. DINNERSTEIN: Just that the lawyer called him on January 7th which has to do with the part of the stipulation that we talked about in terms of phone calls. There's phone calls from the defendant to the lawyer. The phone call, they stipulated to that.

MR. BITKOWER: Not to the second call from the lawyer to the government; only the lawyer -- from the defendant lawyer.

MR . DINNERSTEIN: We know the lawyer called this agent.

MR. LOONAM: It is irrelevant.

THE COURT: Will you stop interrupting.

MR. LOONAM: I apologize.

THE COURT: If I left this in what are you going to argue to the jury from it? What relevances does it have?

MR. DINNERSTEIN: Well it has to do with the credibility of the officers.

THE COURT: Sustained. It doesn't sufficiently bear on the credibility of the officers and it confuses the jury. It suggests an impropriety with regard to allowing him to speak to counsel. That is really a suppression issue. I don't think it is either an impeachment issue or a voluntariness issue, at least not in the main.

MR. DINNERSTEIN: Okay. I disagree but --

THE COURT: I understand. You don't have to agree with me.

(End of sie-bar)

(Continued on next page)

(The following took place in open court).
BY MR. DINNERSTEIN:
Q Now, sir, before you testified today, you filled out a lot of reports; is that correct?
A A lot of reports, sure.
Q Okay. You filled out -- the reports are call 302 reports; is that correct?
A 302s, yes.
Q Now, 302s are items that you reviewed prior to your testimony today; is that correct?
A There are 302s I reviewed prior to my testimony, yes.
Q And the 302s that you reviewed prior to your testimony today happen to deal with what you say Mr. MKedunjamin said to you; is that correct?
A 32s are a report of that interview. I wouldn't necessarily say that they are my version of what he said.
Q Are they verbatim as to what he said?
A They're not verbatim. They are not meant to be written or read that way.
Q Are they summaries of what he said?
A I wouldn't necessarily say summary either.
Q Now, you know that there are tape-recorders?
A That exist?
Q That exist?
A Yes.

Q And you know that there are tape-recorders that exist in the U. S. Attorney's Office; is that correct?
A Yes. Sure. I guess there are. I can't confirm that sure.
Q You know there are tape-recorders that occur in your office; is that correct?
A I'm sorry. Tape-recorders that occur --
Q In your ofice?
A Yes, yes.
Q And there are actually video equipment in your office; is that correct?
A Yes.
Q Now, you say that you interviewed Mr. Medunjanin on September 14th; right?
A Yes.
Q And that interview occurred on the street; is that correct?
A That's correct.
Q And did you take any notes at that interview?
A Yes.
Q And these are handwritten notes?
A Correct.
Q And did you take notes contemporaneous with when the interview was going on?
A Yes.

Q And you also say that you interviewed him on September 17th; is that correct?
A Yes.
Q Three days later, right?
A Yes, sir.
Q And that interview occurred in the United States Attorney's Office; isn't that right?
A Yes.
Q And you presumed, sir, that they had tape-recorders, is that correct, in their office?
A Yes.
Q And you said, sir, that you spoke to Mr. Medunjanin for about eight hours; isn't that correct?
A Yes.
Q And actually, wasn't it closer to ten hours?
A It may have been. I don't know if we took a start and stop time.
Q Do you recall testifying at another occasion that the conversation -- that you spoke with him for about ten hours?
A Testifying previous to this? Talking about a hearing?
Q At another court proceeding that you had sworn to tell the truth?
A I do remember the hearing. I haven't read that transcript or seen that transcript or -- I don't recall saying if it was ten specifically.

Q Do you remember being asked this question Mr. Loonam and giving this answer (reading):

Question: Approximately how long did you speak with the defendant on September 17th, 2009?

Answer: A total of about ten hours.

Do you remember, sir, being asked that question and giving that answer?

A Is this in March of last year that you are speaking of?

Q Yes.

A I don't recall every question from March of last year that we spoke about?

MR. DINNERSTEIN: Would you stipulate that I am reading accurately?

MR. LOONAM: Sure.

Q So you don't recall every question that was asked and answered back in 2011 at this hearing?

A That's correct, sir.

A Yes, sir.

Q How would your memory better than it is today?

Let me rephrase that question.

Would you agree with me, sir, that by having an audiotape or a videotape, that it would be able to refresh your memory better than just sitting up there and saying I remember what happened in some conversation that occurred two and a half, three years ago?

A I'm sorry, sir. Are you asking me if a video recording or an audio recording would be better to refresh my memory of an event -- any event?
Q Yes, let's say any event.
A Yes, yes that was why --
Q And in this case on September 17, 2009 when Mr. Medunjanin was being questioned by you and -- was it Maysonet?
A Yes, sir.
Q You chose not to tape-record the conversation; is that correct?
A Well, as a matter of standard operating procedure for the FBI, we don't record our conversations. We don't videotape them we take notes. That's where it is. I mean I'll agree with you that taping a sporting event is worthwhile.
THE COURT: Just listen to the question and answer the question.
Q Now, sir, you were involved in this case from what date, sir?
A September 9th, 2009. Possibly the 8th.
Q Were you aware, sir, of some e-mail messages that were sent from Najibullah Zazi to people in Pakistan?
A Yes.
Q And you became aware of that around September the 9th; is that correct?

A Yes.
Q And is that what caused you to be involved in this particular investigation?
MR. LOONAM: Objection.
THE COURT: Overruled.
A It wasn't those e-mails specifically. It was the association that the New York based defendant and Zarein Ahmedzay had with Najibullah Zazi and their travel together.
Q So you were familiar on September the 9th that these individuals had gone to Pakistan in August of 2008; is that correct?
A Around September the 9th. I don't know if we had the travel records that particular day, but around September 9th.
Q Now, you also said though that there were some e-mails that caused you some concern; is that correct?
A Yes, sir.
MR. DINNERSTEIN: And this is Government Exhibit 254.
THE COURT: Is this in evidence?
MR. DINNERSTEIN: Yes, it is.
THE COURT: It's on the screen.
Do you want me to put it up on the big screen?
MR. DINNERSTEIN: Yes, thank you, Your Honor.
THE COURT: I'll do my best. Here you go. It is warming up. Everybody can see it. It is on the other screens.
Q Now, the first e-mail, Government Exhibit 254, is an

e-mail from Najibullah Zazi to someone in Pakistan; is that correct?

A Yes, the top part is, yes.

(Continued on next page)

BY MR. DINNERSTEIN: (Continued)

Q And in that E-mail, he talks about flavor and ghee oil; is that correct?

A It's flour and ghee oil, I believe he spells it flavor.

Q Okay. But ghee oil is actually a concern for you; is that correct?

A Ghee oil or gee oil, yes, it is.

Q And mixing those items together could, conceivably, cause an explosive device; is that correct?

A I don't know those two particular items. I don't, I can't speak to the specific explosive parts or the chemistry.

Q Was there something about this E-mail that caused you a concern?

A Yes.

Q And what was that?

MR. LOONAM: Objection, Your Honor.

Could we have a side-bar?

THE COURT: Yes.

(Side-bar conference held on the record out of the hearing of the jury.)

(Continued on following page.)

(Side-bar.)

THE COURT: Yes?

MR. BITKOWER: Your Honor, I don't know where this is going. There may be a sense in which this gets into Your Honor's pre-trial ruling. If we can talk to Counsel briefly, it may not get into that concern, but it may.

THE COURT: Okay.

MR. BITKOWER: If I could have two seconds to talk to Counsel about it.

THE COURT: What ruling are you talking about?

MR. LOONAM: The ruling that we're calling Your Honor's Pre-Trial ruling pursuant to Your Honor's pre-trial written order, of what we should call Your Honor's pre-trial ruling. It might involve in camera proceedings.

THE COURT: Oh, I see. Well, talk to him and maybe it will go away.

MR. BITKOWER: Yes, thank you.

(Pause in the proceedings.)

MS. BERGER: I think we resolved it.

THE COURT: Okay, everyone's going away from me, so I think we don't have a dispute. I think I can read between the lines.

(Side-bar end.)

(Continued on following page.)

(In open court.)

Q Sir, you're aware of the fact that there were three E-mails sent from Najibullah Zazi to people in Pakistan; is that correct?

A Yes.

Q And each of those three E-mails talked about a mixture, of flour and ghee; isn't that correct?

A Yes.

Q And as a result of that, you were -- these items were brought -- as an FBI agent made you concerned; isn't that correct, sir?

A Yes. The coded language in the E-mails did.

Q And what is the coded language that you're talking about, sir?

MR. DINNERSTEIN: This is 256 I'm going show you at this point.

(The above-referred to Exhibit was published to the jury.)

Q Where is the coded language?

"Please, send me details about ghee and flour mixtures."

Isn't that what it says?

A This one, yes.

Q Okay. That's not coded. That's flat-out what he's asking for; isn't that correct, sir?

A Yes, that's right.

MR. DINNERSTEIN: And 255.

(The above-referred to Exhibit was published to the jury.)

Q It talks about: The marriage is ready, flour and oil.

Is that coded language?

A Yes.

Q I see. So, it's coded because they talk about marriage instead of talking about a bomb; is that correct, sir?

A They're talking about an event. My training and experience tells me that marriage could be about an event.

Q Now, all of these three E-mails were sent from Najibullah to somebody in Pakistan; is that correct?

A Yes.

Q Were there any E-mails that Adis Medunjanin had regarding flour and oil or flour and ghee, anything like that, sir?

A No.

Q Now, there was a third E-mail or there was another E-mail that had the reference to the name Mohammed; isn't that correct, sir?

A I believe the first E-mail to Najibullah had Mohammed in there.

Q And it indicated -- and this was actually the E-mail from Sana Pakhana to Zazi; isn't that correct?

A It's from the E-mail address Sana_Pakhana to

Najibullah Zazi, yes.
Q And reference to Mohammed; correct?
A Yes.
Q And there's an indication, also, that this person's asking for his E-mail address or a phone number; is that correct?
A Yes.
Q Is there any indication that Zazi ever sent an E-mail to this fellow in Pakistan --
A Yes.
Q -- that provided --
A Sorry.
Q -- the information of Mohammed's E-mail address or his phone number?
A No.
Q And in fact, it may be that having the name Mohammed simply is a way of communicating to Zazi that they're talking to the right person?
A I'm sorry, could you repeat that?
MR. LOONAM: Objection.
THE COURT: Overruled.
A Could you repeat that, please?
Q Well, this is an E-mail back to Zazi; right?
A I don't believe so, sir. I believe that's the first one. If we look at the dates, and if you could put it back up.

Q Sure.

(The above-referred to Exhibit was published to the jury.)

A So, this --

MR. DINNERSTEIN: Would you like me to, oh, you have to see the other one, too, I bet.

(Complies.)

THE COURT: Is there a question pending?

MR. DINNERSTEIN: Yes, I'll repeat the question.

Q You said, sir, that the E-mail from Khan was sent prior to the E-mail that Zazi sent; is that correct, sir?

A Yes.

Q And we know that because of the times; right?

A Yes.

Q Do we know that 5:14:59, whether or not that's Pakistani time or whether or not that's Colorado time or PDT, I guess, Pacific Daylight Time.

Do we know that?

A I don't, at this time, I know we determined that back when this investigation started. I, I don't recall right now. It could be GMT.

Q GMT could be the 5:14:59?

A Yes.

Q How do you know that? Do you remember that, sir?

A I vaguely recall that was how the time was recorded, but

I don't -- I can't confirm that right now.
Q Now, you said, sir, that it's not the policy of the FBI to tape-record interviews; is that correct, sir?
A Yes, sir.
Q And you, sir, are the case agent in this case; is that right?
A For this defendant, this case, yes.
Q Well, what about the Colorado case.
A There was a different case agent.
Q And was that case agent always involved at the -- in this particular case from Colorado or did you -- did it get transferred over to you at some point?
A The Najibullah Zazi investigation started as a Denver investigation with a Denver case agent out of the Denver office and has since been transferred to New York, not to me personally.
Q And they interviewed Zazi on September the 16th; is that correct? The first time?
A 2009, right? Yes.
Q 2009. And this was, of course, the day after the interview at the U.S. Attorney's Office with you; is that correct, with Adis?
A We did ours on the 17th, sir.
Q That's right. So, the 16th is the day before the 17th; is that correct?

A Yes, sir.
Q And when they were interviewing Zazi in Colorado, they videotaped that interview; isn't that correct, sir?
A That is correct.
Q Now, you just told us, sir, that the policy is not to tape-record the interviews of individuals; is that correct?
A Yes, sir, that's the standard FBI policy.
Q So, in other words, what happened in Colorado violated the standard policy; is that correct?
A That's not necessarily true. I believe, I believe you can, you can record an interview with a special approval from that office. I don't, I don't know what occurred out there.
Q Can you think of a reason why you would not record the interviews, sir?
A It's not policy. It's not what we do.
Q I understand that. But can you think of a good reason why you wouldn't record the interviews?
A No.
Q In fact, if you record them, then there'll be a recording that could be used later on; is that correct?
A Well, if we do record them, then it would be to use them later on. It could be helpful, yes.
Q So, for instance, when you say Mr. Azad is friendly, that's your opinion; isn't that correct, sir?
A Of myself?

THE COURT: Mr. Azad?

Q It's your opinion that he's being friendly -- no, that Mr. Adis was being friendly --

MR. DINNERSTEIN: I'm sorry, I withdraw the question.

Q You said at some point that Mr. Adis, when you talked to him, was friendly; isn't that right? Mr. Medunjanin.

A Yes, the conversation with Mr. Medunjanin was friendly.

Q Okay. Now, that's your opinion; that it was a friendly interview; isn't that correct?

A Sure.

Q You determined that he wasn't anxious; isn't that correct?

A Are we talking about a specific interview? In general? Can we be more specific?

Q Let's get to the interviews, okay?

Now, how long, sir, have you been with the FBI?

A It's four years.

Q And in 2009, how long had you been with the FBI?

A Which part? The beginning of 2009 would be about a year.

Q And is this the first terrorism case that you became the case agent for?

A No.

Q And when -- when else were you a case agent on the case?

A Prior to this, a couple that I can think of. When I first came on to CT-4, probably about a month later I had a case open.

Q What did you do prior to working for the FBI, starting in 2008?

A I was a teacher.

Q A school teacher?

A Yes, sir. Middle school.

Q And then, after leaving the middle school, you became a member of the FBI.

And shortly after that, within a few months, you first became a case agent; is that correct?

A Not counting the training at Quantico in between, which is about six months, yes.

Q And then, shortly after that, after the six months, you then became a member of the New York task force or the FBI.

And you shortly after that, became a case agent; is that correct?

A A case agent in general?

Q Well, a case agent on a particular case.

A Yes.

Q Now, what are the duties of a case agent, sir?

A Case agent is responsible for the overall direction of a case. It's hard to say, in general, which direction that might head. It depends on the investigation and the type of investigation.

Q Let's talk about this case.

For instance, how many other agents were under you in this particular case?

A This was not a normal case. I had a co-case. There were several other agents working. Within shortly after opening this investigation, analysts within three days or so, we had a full operation center working on this case and the adjacent case for Zarein Ahmedzay. Najibullah Zazi had come to town. We were -- all of the New York FBI, not just the JTTF -- was pretty much involved in this, in this investigation.

Q Well, when you say "all," what are we talking about in terms of numbers, sir?

A I'm pretty much talking about all of it, from the assistant director-in-charge down to all of the analysts. I don't know the specific number of employees we have in the FBI in New York.

Q Are we talking hundreds of people?

A Yes.

Q And your role as the case agent was, you were kind of the head of all these people who were working on the case; is that correct, sir?

A Again, this wasn't the normal investigation. It didn't work that way. This was being operated 24/seven. There were, there were multiple levels, you know, case agent, management, supervisors, all the way up to the assistant

director-in-charge involved in this case.
Q And there were also individuals, I guess we'll call them detectives, from the New York City Police Department; is that correct?
A Yes.
Q And you said that the co-case agent was this guy named Maysonet; is that correct?
A Yes.
Q And did you coordinate the activities of the New York Police Department?
A No.
Q How does that work?
A The Police Department?
Q Yeah.
A I think they have a Police Commissioner. Is that -- I don't know what the specific question is.
Q Well, you said, sir, that this is a joint activity; isn't that correct?
A You mean the Joint Terrorism Task Force?
Q Right.
A Okay. The Joint Terrorism Task Force, my squad CT-4, for example, has agents and detectives.
At the squad level we have a squad supervisor, a special supervisory agent, and a Sergeant who are at the leadership position on that squad.

Q Now, what about the Police Department? How does that work in terms of this activities that coordinates your activity with their activity?
A So, we're separate from JTTF now?
Q Now, no, we're talking about what happened in this investigation.
There's a Joint Terrorism Task Force. There's a detective by the name of Maysonet; is that correct?
A Yes.
Q You and Maysonet I presume worked together; is that correct?
A Yes.
Q And you and Maysonet have members of the FBI and there are, of course, members of the New York Police Department who work under the two of you; is that correct?
A I wouldn't consider under the two of me. So, we're at the agent/detective level, we work under the supervisory level, which would be the SSA, the Supervisory Special Agent and the Sergeant for the squad.
Q But the nuts and bolts, the day-to-day activity of this particular investigation, the coordinators are you and Maysonet; isn't that correct, sir?
A I would say on a normal case, yes. This was not the normal investigation.
Q So, there was somebody that you had to inform what was

going on; is that correct?
A This was pretty much an all-hands-on investigation. Especially in the early days, there were constant meetings with everybody involved. There were very little briefings that I would give, if that's what you mean by that.
Q No, but you were present at the briefings; is that correct?
A Yes.
Q And were all these hundreds of FBI agents present at the briefings?
A There would be different coordination meetings with different cities, video teleconference, different divisions tied in. We would also have New York Division meetings in the operations center where things would get briefed.
Does that answer your question?
Q Well, I'm trying to understand how the operation worked in terms of the investigation.
A And I apologize. This wasn't the normal investigation, you know, this was much out of our norms of a normal case. So, it's tough to say how things generally work and how they did work in this case.
Q So, you would have to say, sir, that this was a very large investigation; is that correct?
A Yes.
Q And would you say, sir, that there was a pressure upon

you to try to solve the criminal activity?
A I would say there was a strong indication that there was a threat to national security. This was serious, we saw that. We, we definitely intended to disrupt any potential plots that were pending, any threats to New York we wanted to prevent from happening, there were a number of events. So, yes, all of that.
Q Well, and you successfully did that when Zazi went back to Colorado; isn't that correct, sir?
A That's partially correct. We did not have anybody arrested. We still had the three associates that we knew traveled together to an area in Pakistan that we were concerned with and they were all still out. We weren't really convinced that we had disrupted this plot.
Q But what you did know at that time is that it was your understanding that Zazi flew back to Colorado; is that correct?
A I -- yes. I knew that Zazi had flown back to Colorado earlier than intended.
Q And you also knew that it was Zazi who had explosive devices -- excuse me -- on his computer, had chemical plans how to go about making a bomb; isn't that correct, sir?
A Yes. We were aware of the notes that were on Najibullah Zazi's computer.
Q Now, and you knew that soon after the imaging of that

computer was done in September of 2009; is that correct?
A Yes.
Q Now, you knew that Adis was living with his parents at one -- excuse me -- at 29-49 137th Street; is that correct?
A Yes.
Q And that Ahmedzay was also living in Queens; is that correct?
A Yes.
Q And it was -- and that on September the 14th, you conducted a search warrant; is that correct?
A We conducted search warrants on September the 14th, yes.
Q Right. The search warrant that I'm talking about is the one at 29-49 137th Street; correct?
A Yes, sir.
Q That was one of the search warrants that you conducted on that day; is that correct?
A Yes.
Q And you, as the case agent, was supervising the search warrant; is that correct?
A That is not correct. Again, this wasn't the normal investigation. I didn't -- normally --
THE COURT: So, no, you weren't supervising?
THE WITNESS: No. I was not supervising the search.
Q But you were present at the search; is that correct?
A I was present for part of the search, yes.

Q What part were you present for?
A Post-entry, post- the SWAT entry after the initial bomb techs went through. I entered. Once we knew that the scene was under control, Detective Maysonet and I went in, went to the residence, spoke with the defendant, and left. So, small portion.
Q Right. And you left with Mr. Medunjanin; is that correct?
A Yes, we left together.
Q And you said, sir, that Mr. Medunjanin went with you voluntarily; is that correct?
A Yes.
Q Now, how many agents actually went into that particular apartment that day?
A I don't know.
Q Well, was it more than five?
A Yes.
Q Was it more than ten?
A Are we talking total?
Q Yeah, total.
A Yes, I would say there was more than ten.
Q Was it more than 20?
A I don't know.
Q Now, and you conducted this search at about 2:00 o'clock, 2:30 in the morning; is that correct, sir?

A Yes, sir.
Q And what was the reason that it was conducted at such -- in the middle of the night?
A Again, this wasn't usual. We knew that there was a serious potential threat to national security. We couldn't wait like we normally would to the morning, we needed to act immediately.
Q And what did you find?
A At this particular search --
Q Yeah.
A -- location?
Many things were seized. I mean, we found phones. We found CDs. DVDs. Written material. Laptops. Computers. We can -- I'm sure there's a form where we can go through everything.
Is there a specific direction you want me to go in?
Q Did you find any explosive devices?
A We did not.
Q Did you find any residue of explosive devices?
A No.
Q Did you find any chemical formulas on any of those computers or any pieces of paper in the apartment?
A None that were actually related to this plot.
Q Did you find any acetone?
A I don't know. I mean, cleaning materials, I don't know.

Q Well, sir, if you found acetone, that would have been a big deal.

You would have seized it; is that correct, sir?

A I don't know. Again, I wasn't involved in the search planning or execution, I was more the interview team. I was planning for that. I didn't participate in the planning for the search.

Q There were dogs involved in this search at 29-49 137th Street; isn't that correct?

A The Bomb Training K-9 unit yes.

Q And how many dogs were there?

A I don't know.

Q Did you find any hydrogen peroxide?

A I don't know.

Q Is it down on any of those forms that were filled out?

A I have not seen any hydrogen peroxide.

Q How about -- what is it; ghee oil? Did you find any of that?

A I don't believe so.

Q Now, were you looking to see what travel Mr. Medunjanin had made?

A During the search.

Q Yeah, during that search.

A Again, I wasn't part of the search planning. And I don't know if there were, if the list of items that were on the

rider included travel material or passports or anything like that.
Q Well, sir, wouldn't it have been relevant to find out where Mr. Medunjanin had traveled to confirm the information that you had regarding his travel to Pakistan?
A It would have been helpful. We have databases and understandings with other agencies, like CBP and ICE that can provide those records as well.
Q So, you knew that Mr. Medunjanin had traveled to Pakistan in August of 2008; is that correct?
A Yes.
Q And you knew that prior to this search, excuse me, this search in September 14th of 2009; is that correct?
A Yes.
Q And you actually knew that on January the 7th of 2010, when you returned with a request -- not a request -- with a warrant, a search warrant, for a passport; is that correct?
A Yes.
Q Now, and it takes some trouble to got a search warrant; isn't that correct, sir?
A That's relative and depends on the situation, I suppose.
Q Well, in this case, it took some -- you had to prepare a search warrant application; isn't that correct, sir?
A Not personally. It's done in conjunction with the U.S. Attorney's Office.

Q So, the U.S. Attorney provided you with a copy of a search warrant application; is that correct?
A Are we talking before? Yes. It's prepared, a copy was prepared and reviewed before the application was made.
MR. DINNERSTEIN: I'm going to just ask that this be shown.
THE COURT: Okay.
MR. DINNERSTEIN: Specifically to the witness. It's FA-6.
(The above-referred to Exhibit was published to the witness.)
Q Can you see, that sir?
A Yes, I can.
Q And on the last page, page 10, your name is there; is that correct?
A Yes, that's my name and signature.
Q And you signed it; is that right?
A Yes.
Q And you needed to sign it before a judge; isn't that correct?
A Yes.
Q And you did that all on December the 29th of 2009; is that correct?
A Yes.
Q The one item that you were looking for this particular

date was a passport; is that correct?

A I believe so. It's in the search warrant, if you don't mind, if I could read it through.

Q Okay.

(Pause in the proceedings.)

Q Do you see it on that page, sir?

A It's not on that page.

Q Page 1, paragraph 18 talks about the present application; is that correct, sir?

THE COURT: He can't see 18.

THE WITNESS: It's at the bottom, I can only see the title there.

THE COURT: If you look to your right, you can see what he sees.

(The above-referred to Exhibit was published to the witness.)

Q Do you see it?

A Yes.

Q And it goes on to page 9; is that correct?

A Yes.

Q And it talks about passports; is that correct?

A Yes.

Q Now, so on December 29th you filled out a search warrant application to get one passport; is that correct?

MR. LOONAM: Objection to foundation there.

Mischaracterizes the testimony.

THE COURT: Well, overruled.

He can answer.

A I think it was for more than one passport. I think it's passports, plural.

Q You were looking for Adis Medunjanin's passports; is that correct?

A Yes, sir.

Q Now, did you ever make an effort to speak to anyone about getting the passport without going to the trouble of getting a search warrant?

A You mean with the family members or anyone in general?

Q Well --

A Did we ask them.

Q -- family members to see whether they would just give you the passport?

A No, we didn't.

Q And how about with the lawyer?

A No.

Q Did you think if you called the lawyer, he may have just provided you with the passport?

A I don't know.

Q Did you think it was worth a try before filling out all these papers?

A No. We wanted the passport, we got a search warrant.

Q Now, sir, you knew what was going to be in the passport; isn't that correct?
A Not the entire passport, but there was particular things we were looking for.
Q And what were you looking for?
A One thing in particular was the extension, the visa extension from Pakistan.
Q And there, in fact, was a visa extension; isn't that correct?
A Yes.
Q And did you believe that there may not have been a visa extension?
A No, we believed it was in there. So, yes, we, we thought it would be in there.
MR. DINNERSTEIN: And this is a colored copy of the visa extension, and this is in evidence.
(The above-referred to Exhibit was published to the witness.)
THE COURT: As what.
MR. DINNERSTEIN: 125, Your Honor.
THE COURT: Thank you.
THE WITNESS: Yes.
Q And this visa extension indicated that Mr. Medunjanin could stay in the, in Pakistan until December the 16th of 2008; is that correct?

A Yes.
Q Now, you do know, from looking at those travel records, that Mr. Medunjanin left the country in September of 2008; is that correct?
A Yes.
Q And I think the date is September 25th, is it, that he left the country?
A Yes.
Q Now, why did you -- first, wasn't there another way you could have found out about the visa extension, other than going through the trouble of getting the search warrant?
A As previously discussed, if we just asked for it.
Q You could have asked. Or you could have just contacted the Pakistani embassy.
They have one in New York; right?
A Yes. I believe there's a Pakistani embassy.
Q Not you believe. You know there's a Pakistani embassy in New York; don't you, sir?
MR. LOONAM: Objection.
THE COURT: Don't do that.
MR. DINNERSTEIN: I'm sorry, Your Honor.
THE COURT: Don't argue with him. Just ask the questions.
Q Do you know whether there's a Pakistani embassy in New York?

A Actually, I'm not sure. But I will -- yeah, I know there's one in D.C., yes. I will give you that.
Q So, September 14th, you came into the house at some point; right?
A I did, yes.
Q What was the people's reaction to having all these FBI agents inside their house?
A I believe the residents were startled.
Q Startled? What does that mean?
A Shaken up.
Q Was anybody crying?
A I don't know.
Q Who was inside the house, do you remember?
A Of the residents, it was family members, the defendant, his sister, and the parents.
Q Did you notice whether the parents spoke English?
A I didn't at the time.
Q Did you speak to the parents on that day?
A No.
Q Did you -- did anyone spoke to the parents to tell them what was going on?
A Again, I don't know. I went in, spoke to the defendant, came out.
Q Did you speak to the father?
A I don't recall. I may have. I remember seeing the

father, I don't know if anything was said. I know I was looking for the defendant. I don't think we spent time with the father.

Q And when you came into the house, everyone was handcuffed; is that correct?

A I don't know about that. I know the defendant was handcuffed.

Q And was his father handcuffed?

A I don't know. I recall he was sitting down. I don't know.

Q Was the, was the defendant, Adis, was he sitting down, also?

A Don't think so.

Q What was he doing?

A I think he was standing upright. I think the search team knew that we would be coming in to speak to him, so they had him upright.

Q You mean the agents knew that one of the reasons all this was going on was so that you would have an opportunity to speak to Adis Medunjanin; is that correct?

A Yes, that was -- interviewing was part of the plan that was briefed.

Q Now, you said Adis Medunjanin went with you voluntarily; correct.

A Yes.

Q Now, how did you ask him whether he wished to go outside with you at 3:00 o'clock in the morning?
A We, we approached, asked him to be unhandcuffed, introduced ourselves, and asked if we could go talk outside.
Q And he could have said either yes or no; is that your testimony, sir?
A Yes.
Q And he said yes; right?
A Yes.
Q Did he say anything else, like sure?
A I don't recall.
Q Do you remember if he expressed during that time when he was in the apartment and there were other family members there, whether he expressed a concern for his other family members?
A I don't recall.
Q Well, you think it would be natural to be concerned about your family members?
MR. LOONAM: Objection.
THE COURT: Sustained.
Q Now, how long were you in the apartment before Adis voluntarily went outside with you?
A I don't know a specific amount of time. Minutes, it would be my guess. Single-digit minutes.
Q Now, and you were, of course, with this agent -- excuse

me -- Detective Maysonet; is that correct?
A Yes.
Q And the two of you went outside at that point; is that correct?
A That's -- with the defendant, yes.
Q With the defendant.
A Right.
Q Who, at that point, was unhandcuffed; is that right?
A Yes, sir.
Q And also, do you know if any of the other family members were asked to leave the apartment?
A I do know now, yes.
Q You do know now. From hearing the testimony?
A No, no. I know that they were all interviewed outside of the apartment for the same reasons.
Q And how do you know that now?
A As the case agent at the time, I, I've read the 302s, I've spoken to the interviewing agents.
Q And that would be the policy, to take all of the people out of the apartment; is that correct?
A I don't know if it would be policy.
MR. DINNERSTEIN: Your Honor, can I just have a moment? I want some water.
THE COURT: Sure.
MR. DINNERSTEIN: Thank you.

(Pause in the proceedings.)

Q Now, on September 17th -- by the way, sir, had Zazi already been arrested?

A I don't think so. I think he was arrested on the 19th.

Q I'm sorry?

A I believe he was arrested on the 19th.

Q Were you, sir, aware that this, the investigation with Zazi, had caused some media attention?

A Yes.

Q And were you receiving phone calls from the media regarding what was going on in terms of this investigation?

A I was not.

Q Do you know whether anybody was receiving phone calls?

A I can guess that the FBI office was getting phone calls, yes.

Q And why would you guess that, sir?

A It's typical in an investigation for media to try to get information.

Q Especially one of this magnitude; is that correct?

A Yes.

Q Now, sir, you say that around 3:00 o'clock in the morning you took Mr. Medunjanin outside and you began talking to him; is that correct?

A Yes.

Q And Maysonet was there also; right?

A Yes.
Q And the first thing you did was, you put Mr. Medunjanin in a vehicle; is that correct?
A Yes.
Q And that would be your vehicle?
A No.
Q Whose vehicle was it?
A Detective Maysonet's.
Q And you drove a few blocks; is that correct?
A Yes.
Q Was it your -- at that time, was it your plan to do this interview on the street?
A Yes.
Q And why on the street and not in a, in an office?
A Just somewhere close.
Q Well, did you know whether there were any all-night coffee shops in the general area?
A No.
Q Would it have been better to have this interview in a place where you could sit down and talk to Mr. Medunjanin face-to-face?
MR. LOONAM: Objection.
THE COURT: Overruled.
A Not in an all-night coffee place with people coming and going. I wouldn't want to do that.

Q And where was your office, the JTTF office?
A In Manhattan.
Q Is there an office in Queens?
A We do have an office in Queens.
Q And where is that in relation to, let's say, the Whitestone Expressway?
A I, actually, I'm not very familiar with that address. I don't know.
Q And there's police precincts around in this general area; is that correct?
A Yes.
Q And you're well-aware of the fact that police precincts also are places to conduct interviews; is that right?
A In some cases, yes.
Q You mean, in some cases they don't have places to conduct interviews?
A No, but in this case, I mean, we wouldn't take him from his residence and bring him to a police precinct for an interview.
Q Because he wasn't under arrest; is that correct?
A That's right.
Q Could you have taken him to the U.S. Attorney's Office on September 14th in Brooklyn?
A I suppose if we had arranged that, yes.
Q Well, in other words, you didn't make nay arrangements to

interview Mr. Medunjanin, except on a street corner; is that correct?
A Well, at this point we'd had no contact with him. We weren't sure if he would even agree to a voluntary interview.
Q But he did agree.
And at that point, once he agreed, you were hoping to get a good deal of information; isn't that correct?
A We were hoping to get a truthful interview, yes.
Q And a truthful interview is for him to say he's a suicide bomber; right?
A No. A truthful interview would be one where any inconsistencies or things that just generally don't make sense are kind of detailed out.
Q Well, he was actually quite compliant with you; isn't that correct?
A I'm sorry, I didn't catch that.
Q He was quite compliant with you; isn't that correct?
A Yes, yes.
Q And he was cooperative?
A For the most part, yes.
Q Well, when you say "for the most part," when wasn't he cooperative?
A Certain parts during that interview. Like, when we talked about American politics where he brought up the, we were talking about pending attacks he brought up the part

about we don't want this war.

Later on in that same paragraph he kind of crossed his arms. We asked what he was doing. He said he was crossing his arms, as the Prophet Muhammad did, to show strength in front of his enemies.

And we said that we're not enemies.

He said that he was just showing defiance in front of his interrogators.

We said: This is a voluntary interview, we're not interrogating you.

Q Now, sir, you were taking notes; is that correct?
A Yes.
Q Did you take any notes of any of that stuff that you just talked to the jury about?
A The interview or that particular piece?
Q That particular piece.
A No, I, that's not my general practice --
Q So --
A -- to note body posture.

THE COURT: Wait until he's done, please.

MR. DINNERSTEIN: You're right, Judge. I'm sorry.

THE COURT: Same you with you, please. She is trying to take it all down. Wait until he finishes.

THE WITNESS: Sorry.

THE COURT REPORTER: Thank you, Your Honor.

Q So, sir, your general practice is you take notes of some things and leave out other things; is that your testimony, sir?
A Yes.
Q And what do you decide to put in your notes and what do you decide not to put in your notes?
A It depends on the situation, it depends on the interview. In this case, something like body posture I knew I would remember later, especially with this description. So, I decided that I didn't need to write it down. Notes are for my reference later on.
Q Sir, aren't notes helpful so that you could remember what happened later on?
A Yes, they are.
Q So, there are things you decide not to put in your notes; is that correct, sir?
A Yes.
Q Now, for instance, sir, you said on direct examination that one of the things that Mr. Medunjanin told you on September the 14th was that Americans hate Muslims; is that correct?
A Yes.
Q Did you write that down anywhere?
A I don't believe so.
Q And did he also say that one of the problems with America

is their support for Israel; is that correct, sir?
A I believe it's that America's in the position it's in because of its support for Israel.
Q Did you write that down, anywhere?
A I don't believe so.
Q Now, what you did write down was that he talked about his school; isn't that correct, sir?
What are you looking at now, sir?
A These are my notes from that interview.
Q Okay. And would that be FA-2?
A Yes, sir.
Q And FA is your name; right?
A Those are my initials, yes.
Q Yes, I'm sorry.
And your notes are about what, three pages?
A I believe it's four.
MR. DINNERSTEIN: Sir, I'm just going to show you, just so that we're talking about the same thing -- and this is just for the witness, Your Honor.
THE COURT: Yes.
MR. DINNERSTEIN: FA -- I'm sorry. FA-2.
(The above-referred to Exhibit was published to the witness.)

(Continued on following page.)

BY MR. DINNERSTEIN:
Q This what we are talking about, sir, what you are looking at now?
A Yes, it is.
Q And these notes go on for about three and a half pages; is that correct?
A Yes.
Q And the first page basically is the name of his mother and father, how he knew Najibullah, right?
A The defendant's biographical information, I'd say, some of the travel information, the relatives' names.
Q And he told you on that page that he travelled with Najibullah to Pakistan; is that correct?
A Yes.
Q And you, of course, knew that, right, but you asked him anyway just to see if he would be truthful about that; is that correct, sir?
A Yes, that's right.
Q And he was truthful, right?
A About that piece, yes.
Q And he was truthful about travelling and he was truthful about knowing Najibullah and knowing that Najibullah was a friend of his, right, he didn't deny that; is that correct, sir?
A No, he did not deny.

Q And at this time on August -- September 14th do you know whether or not Najibullah had already been -- his name had already been placed in the news medium?
A I don't know the timeline. I don't know.
Q Do you know whether there are any news stories prior to September 14th when you conducted this interview regarding Najibullah Zazi?
A I think there were, yes.
Q So he was acknowledge -- and the way it was brought up had something to do with a subway bombing, right?
A That is not the way it was brought up.
Q Well, how was it brought up that Zazi had some involvement.
A We didn't bring that up.
Q Was there anything in the newspapers that indicated that Najibullah Zazi was either a suspect or possibly involved in criminal activity?
A In general I do remember there was, yes. I can't remember specific article or topic.
Q And in fact, on September 10th his vehicle was stopped at the George Washington Bridge; is that correct?
A Yes.
Q And that he then flew back to Colorado on September the 11th, is that correct -- or September the 12th?
A Twelfth, I believe, yes.

Q It was your understanding the reason he flew back and didn't participate in a subway bombing was because the FBI was on to Najibullah Zazi; is that correct?
A I'm sorry. Could you repeat the first part of that.
Q It was your understanding or your belief that the reason Zazi flew back to Colorado was because he believed that the FBI was onto him?
A Yes.
Q And after that you had a conversation with Mr. Medunjanin where he acknowledged that he and Najibullah Zazi were friends; isn't that correct?
A Yes.
Q You believed that that was an honest answer, right?
A Yes.
Q He didn't dry to distance himself from Najibullah Zazi at all on September 14th; is that correct?
A That's correct.
Q Now, you say that you also spoke about religion with him; is that right?
A Yes.
Q That he seemed knowledgeable about religion; isn't that correct?
A Yes.
Q And specifically he seemed knowledgeable about the Muslim religion?

A Yes, sir.
Q Did you find out whether or not he was able to speak Arabic?
A I don't know. I don't recall.
Q Do you know now whether or not he speaks Arabic?
A It's my understanding that he doesn't speak Arabic as a conversational tool. He can maybe read and recite the Koran.
Q And he told you on that day that he had become quite religious; isn't that correct, sir?
A Yes.
Q And he told you that he had travelled to Mecca and Medina on September 14th; isn't that correct?
A He told us on September 14th about his travel, yes.
Q And that he had gone there for a Haj; is that correct?
A Yes.
Q And what exactly is Haj again?
A Religious pilgrimage.
Q And he also told you that he gave another term other than Haj because he had gone to Mecca and Medina twice, that area twice?
A Yes, the other trip is Omra.
Q And what does that mean?
A It's just a trip to the same place; not during the Haj period.
Q And wasn't it so that he could make an effort to get into

the University in Saudi Arabia?
A Yes, well -- sorry. Are you asking if he went specifically for that purpose?
Q No, not specifically.
Did he make efforts to get into a university when went to Saudi Arabia?
A Yes.
Q What was the university?
A Al Medina university.
Q And do you know what type of university that is?
A I believe it's an Islamic University, Wahhabis.
Q And do you know whether or not he was accepted at that university?
A He said he was not.
Q And did he express a concern that he was not accepted at the university?
A He said he was disappointed, yes.
Q And did he feel that one of the reasons he wasn't accepted at the university was because he didn't speak the language?
A I believe he told us that he wasn't accepted because they only accept a few number of people from the United States each year.
Q Now, h also talked about his family; is that correct?
A Yes.

Q He talked about his mother?
A Yes.
Q He talked about his father?
A Yes.
Q He talked about his sister?
A Yes.
Q And he talked about being from Bosnia, correct?
A Yes.
Q And did he talk about the experience he had coming to the United States from Bosnia?
A Just the immigration part, yes.
Q And what did he say about that?
A He said he had moved to the United States with his family. I believe with his mom first, and then his dad came later, or maybe the dad came first and then they came later. I can't remember the order.
Q Did he talk about what was going on in Bosnia when he came to the United States?
A I remember there was a discussion about the war. I don't remember the timing of when they came and in relation to when the was coming.
Q Did he express -- did he tear up or was he sad when he discussed what had happened in Bosnia to him and his family?
A Possibly.
Q Did he talk about how he had relatives who were actually

slaughtered in Bosnia during that period of time?
A I believe he told us he had relatives that were killed there. I don't recall slaughter.
Q Now, he didn't use the word slaughter. Did he talk about genocide in Bosnia?
A I don't remember a talk of genocide. I remember we talked about Bosnia, and the war in general. We may have discussed the genocide.
Q You were familiar with the fact there was, in fact, a war in Bosnia, in Europe in the early 90s; is that correct?
MR. LOONAM: Objection; relevance.
THE COURT: Sustained.
Shall we break for the day? Do you have more than five minutes left?
MR. DINNERSTEIN: Yes.
THE COURT: Okay, we will break for the day.
MR. DINNERSTEIN: Okay.
THE COURT: Safe home. I have not given the don't tweet, don't blog, don't communicate lecture in a while, have I? I will give it to you now. No tweeting, no blogging, no e-mailing, no nothing. No communicating out. No allowing information in. Remember to respect the fact that you need to be quarantined in the sense that we have discussed over and over again, right? Make your sure you are vigilant about that. Safe home. Have a nice evening.

All right. See you tomorrow. Don't discuss the case.

(Whereupon, the jury exited)

THE COURT: Okay. End of day audit. Where are we? Where are we going?

MR. BITKOWER: After this witness we have, I think, three witnesses left. Three witnesses after this one. Two of whom are quite short, one is medium. So I expect we would rest tomorrow morning.

THE COURT: Okay.

MR. BITKOWER: Prior to lunch, I would hope.

THE COURT: So have your case ready in the morning.

MR. GOTTLIEB: We will be ready to proceed. I think that might be a little optimistic in finishing this witness and the other witnesses by the morning, but we will be ready to proceed tomorrow morning, Your Honor, but I do have a request.

THE COURT: Yes.

MR. GOTTLIEB: I thought I would raise it now because, obviously, we are coming to the end. It looks like we should be able to do everything we have to do this week. Just for our own planning, because anticipating that whether it is tomorrow or even the first thing Thursday. The charge conference in this case, it is going to raise certain issues. We are working on those issues now. We were hoping if there's some way that you could see your way clear to allowing us to sum up, perhaps, on Friday, so that we do whatever we have to do tomorrow, and have the charge conference on Thursday, and deal with any other issues, and give us that few additional hours between the end of all of that and summation, if we could plan on summation on Friday.

MR. BITKOWER: We are ready to sum up tomorrow, Thursday, whenever Your Honor feels appropriate.

THE COURT: Friday is a terrible option for me because I have so much on my calendar. It will inconvenience a lot of people. So is it really a matter of Thursday or Monday, and my inclination would be to go Thursday but would you rather do a Monday?

MR. GOTTLIEB: The answer is unequivocally, and only for an absolute personal reason. The timing of this trial has been -- I am actually moving here in the city from one place to another. So during the entire trial my wife has packed up the entire contents of our apartment and we are moving Friday morning. The guys are showing up Friday at 8 a.m.

THE COURT: That sounds like a reason to be here not --

MS. CARVLIN: Only if you want to stay married.

MR. GOTTLIEB: I did inform my wife that I actually did have to be here but if you could actually give us Friday off, wow, that would be unbelievable.

MR. BITKOWER: Your Honor, we would strongly oppose summing up on Monday. The jury has case. They've got the testimony recent in their minds. If we were to take off effectively four days, four and a half days, I think that would be less than optimal to get the jury to decide this case. In addition, we have told the jurors they will be done by a week from Friday and it is much safer, it seems to me, to close on Thursday then to start the closings on Monday and give the case to the jury probably on Tuesday. I think if the charge conference -- we are ready to have the charge conference now, this evening, tomorrow, tomorrow evening, whatever works. If Your Honor doesn't want to sit on Friday, we would strongly prefer closing on Thursday.

THE COURT: Well, we are conflating two issues, which is when we sum up and whether we sit Friday.

Ilene told me that there are a couple of jurors who have suggested a problem for Friday. So with the confluence of that and my really busy Friday calendar and the issue you referenced, Mr. Gottlieb, suggests maybe we ought to consider not working on Friday, but that doesn't necessarily put out Thursday -- put Thursday out of commission for purposes of summation.

I'm a little surprised to hear there's going to be lot of issues on the charge conference. What do you do anticipate?

MR. GOTTLIEB: I don't mean -- there may not even be contentious issues. I just know that we have already been meeting and will be meeting tonight and tomorrow. I just know there are a number of issues that we do want to raise with regard to defining the law.

THE COURT: I will have a draft for you probably tomorrow morning. So is I don't mean to suggest stop working. If you have got suggestions, you will be able to make them but I'll what I consider to be a workable draft tomorrow. When you rest give you some time to look at it. I am not a big believer in unnecessary language in a charge. I like the jury to be awake at the end of the charge, as well as at the beginning. The shorter the better. So why don't we see where we are. If we can reasonably accomplish both sides resting, whatever post evidence motions you make in a charge conference, then one day ought to be enough to get all the summations in. You can come back on Monday and charge them and they can deliberate. What thinks ye of that proposal?

MR. GOTTLIEB: However, it works out, Your Honor, I'll be here. I've told you, I've told the government, I understand the importance of this and I take it seriously, so if you think that's what we should do, then that's what we are going to do, but if there was some way around it, then it would be appreciated. What I do know is that I think both sides, the government as well as the defense in this case, has worked very hard and even perhaps even more cooperatively than we originally thought initially. If it can work out, great, and if not, we will do whatever you want to do.

THE COURT: Fine. But you're confusing me a little bit. I thought the problem was sitting Friday. Is there a separate problem with summing up Thursday?

MR. GOTTLIEB: No, my only concern in summing up Thursday is I don't think we are going to -- there will be some time tomorrow afternoon that I think we will ultimately both rest, and I think that we certainly will have a lot of work to do tonight. We are working on the issues of the charge. It would just allow us to give the charge, especially if we are going to receive it from Your Honor tomorrow, if we could do that on Thursday -- the charge conference on Thursday, it would be -- I feel more comfortable as defense attorney having tomorrow night, Thursday, to work on the issues of the charge, and then if we could sum up on Monday, that would be our preference.

THE COURT: All right. I can't remember the last charge I had that lasted more than 20 minutes. Maybe that's why we are passing in the night a little bit. Let's see where we are at the end of the day tomorrow.

MR. GOTTLIEB: Okay.

THE COURT: Good.

MR. DINNERSTEIN: Just one other thing. We are going to have a Bosnian interpreter here. I am not sure that those witnesses are not -- are going to testify before the afternoon. So we will have to ask the interpreter to be here for a whole day or half a day. So I wonder if he can show up at two o'clock.

THE COURT: How much more cross do you have?

MR. DINNERSTEIN: Probably another hour.

THE COURT: And then?

MR. BITKOWER: If that's the case we will be on the defense case in the morning, Your Honor.

MR. DINNERSTEIN: All right.

MS. CARVLIN: We may have a conflict with the interpreter. He is the person we have been using, it would be our preference, apparently has a conflict tomorrow morning. I think he's not available first thing in the morning. He is available in the afternoon. So we are about an hour but we will know better exactly when he is available.

THE COURT: Do you want a subpoena? I could give you one.

MS. CARVLIN: I am sure the Family Court where he is tomorrow -- he has a conflict with another court tomorrow.

THE COURT: I don't want dead time.

MS. CARVLIN: I understand.

THE COURT: So be ready to go.

MS. CARVLIN: We will do our best.

THE COURT: Good night.

(Proceedings adjourned as above set forth)

* * * * * * * *

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